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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed as a separate compilation.

RAJYA SABHA

The following Report of the Select Committee on the Constitution (One Hundred and Twenty-third amendment) Bill, 2017 was presented to the Rajya Sabha on 19th July, 2017:—

COMPOSITION OF THE COMMITTEE

Shri Bhupender Yadav — *Chairman*

MEMBERS

2. Shri Chunibhai Kanjibhai Gohel
3. Dr. Vikas Mahatme
4. Shri Ram Narain Dudi
5. Shri B.K. Hariprasad
6. Shri Madhusudan Mistry
7. Shri Digvijaya Singh
8. Shri Husain Dalwai
9. Prof. Ram Gopal Yadav
10. Shri Sharad Yadav
11. Shri Sukhendu Sekhar Roy
12. Shri A. Navaneethakrishnan
13. Shri Satish Chandra Mishra
14. Shri T.K. Rangarajan

15. Shri Dilip Kumar Tirkey
16. Shri C.M. Ramesh
17. Shri Praful Patel
18. Shrimati Kanimozhi
19. Shri Anil Desai
20. Shri Naresh Gujral
21. Mir Mohammad Fayaz
22. Shri Biswajit Daimary
23. Shri Rajeev Chandrasekhar
24. Shri Swapan Dasgupta
25. Shri Ram Kumar Kashyap

SECRETARIAT

- | | | |
|------------------------------|---|----------------------------|
| 1. Shri J. G. Negi | — | <i>Joint Secretary</i> |
| 2. Shri Mahesh Tiwari | — | <i>Director</i> |
| 3. Shri R.S. Rawat | — | <i>Additional Director</i> |
| 4. Shri Rakesh Anand | — | <i>Additional Director</i> |
| 5. Ms Chhaya Gupta | — | <i>Under Secretary</i> |
| 6. Shri Mohit Misra | — | <i>Committee Officer</i> |
| 7. Shri Thang Joyful Tonsing | — | <i>Committee Officer</i> |

**Representatives of the Ministry of Social Justice and Empowerment
(Department of Social Justice)**

1. Smt. G. Latha Krishna Roa, Secretary
2. Shri B.L. Meena, Joint Secretary
3. Shri K. Narayanan, MD, National Backward Classes Finance and Development Corporation.

Representatives of the Ministry of Law and Justice (Department of Legal Affairs)

1. Shri Suresh Chandra, Secretary
2. Shri Ramayan Yadav, Additional Secretary

Representatives of the Ministry of Law and Justice (Legislative Department)

1. Dr. G. Narayan Raju, Secretary
2. Dr. Reeta Vasishta, Additional Secretary
3. Shri R. Sreenivas, Additional Legislative Counsel

ACRONYMS

OBC	Other Backward Classes
SC	Supreme Court
NCSC	National Commission for Scheduled Caste
SEBC	Socially and Educationally Backward Classes
NBCFDC	National Backward Classes Finance and Development Corporation

INTRODUCTION

I, the Chairman of the Select Committee on the Constitution (One hundred and Twenty-third Amendment) Bill, 2017 having been authorized by the Committee to submit the Report on its behalf, present this Report on the Bill.

2. The Constitution (One hundred and Twenty-third Amendment) Bill, 2017 was introduced in the Lok Sabha on the 05th April, 2017 further to amend the Constitution of India. It was passed in the Lok Sabha on the 10th of April, 2017. The Bill, as passed by the Lok Sabha, was referred to the Select Committee comprising 25 Members of the Rajya Sabha on a motion adopted by the House on the 11th April, 2017 for examination of the Bill and report thereon to the Rajya Sabha by the last day of the first week of the next Session (Annexure I).

3. While considering the Bill, the Committee examined and took note of the following documents/papers placed before it:—

- (a) The Constitution (One Hundred and Twenty-third Amendment) Bill, 2017 as passed by Lok Sabha on the 10th April, 2017;
- (b) Brief on the Bill furnished by the Ministry of Social Justice and Empowerment (Department of Social Justice and Empowerment);
- (c) Information/papers on the Bill furnished by the Ministry of Law and Justice (Department of Legal Affairs and Legislative Department);
- (d) Information/papers on the Bill furnished by the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training);
- (e) Information/papers on the Bill furnished by the Ministry of Finance (Department of Financial Services);
- (f) Information/papers on the Bill furnished by the Ministry of Human Resource Development (Department of Higher Education);
- (g) Information/papers on the Bill furnished by the Anthropological Survey of India;
- (h) Memoranda furnished by the State Government and Union Territories;
- (i) Memoranda submitted by the Experts and other stakeholders.

4. The Committee in its sittings held seven meetings in all.

5. The Committee in its first sitting held on the 17th April, 2017 deliberated upon the course of action and procedure for examination of the Bill. The Members also expressed their views and concerns on the provisions of the Bill and decided to discuss the issues with the concerned Ministries. It was also decided that apart from seeking opinion of the concerned Ministries, the views of eminent experts and organizations should be taken for the consideration of the Committee. The Chairman thereafter sought names of the individuals and organizations on which the Committee wanted to take the views into consideration on the subject and directed that they be called for discussion in the subsequent meeting. The Committee also decided to obtain the views of the State Governments and Union Territories on the Bill. It was further decided to issue a Press Release inviting comments and memoranda from the public. In response, the Committee received 72 memoranda from the public on the provisions of the Bill and 23 State Governments and Union Territories submitted their views on the Bill.

6. In its second sitting held on the 24th April, 2017, the Committee heard the views of Secretary, Ministry of Social Justice and Empowerment, Department of Social Justice and Empowerment on the provisions of the Bill. The Managing Director, National Backward Classes Finance and Development Corporation made a presentation on the functioning of the Corporation and its future course of action.

7. In its third sitting held on the 2nd May, 2017 the Committee was briefed on the various judgments starting from the Indra Sawhney judgment to the present day related to reservations. The Committee sought clarifications on a number of issues ranging from the reasons for lack of constitutional status to the present National Commission for Backward Classes to ensuring about giving protection of the present day OBC list under the Bill.

8. In its Fourth meeting held on the 15th May, 2017 the Committee heard the views of Justice (Retd.) V. Eswaraiah, Former Chairman, National Commission for Backward Classes, Dr. K. Veeramani, President, Dravidar Kazhagam and Shri S.K. Kharventhan, Ex. M.P. and Former Member, National Commission for backward Classes.

9. In its fifth meeting held on the 5th June, 2017 the Committee had wide ranging discussions with the Secretaries of the Ministry of Human Resource Development, Department of Higher Education, Ministry of Finance, Department of Revenue and Department of Financial Services and Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training regarding affirmative action. Thereafter, the Committee heard the views of fourteen individuals and representatives of a wide spectrum of organizations working for the empowerment of backward classes, coming from different walks of life and also from different parts of the country on the provisions of the Bill.

10. The Committee in its meeting held on the 3rd July, 2017 took up for clause-by-clause consideration of the Bill. The Ministries of Social Justice and Empowerment (Department of Social Justice and Empowerment) and Ministry of Law and Justice (Department of Legal Affairs and Legislative Department) also furnished their comments/clarifications wherever needed on the issues raised by the Members of the Committee. The Committee, after detailed discussion, adopted all the clauses of the Bill without any amendments.

11. Accordingly, a draft Report was prepared and circulated to the Members.

12. The Committee in its meeting held on the 14th July, 2017 took up the draft Report for consideration. After a brief discussion, the Committee adopted the Report without any amendments.

13. The amendments moved by a Member in the Rajya Sabha on the said Bill during its introduction were also referred to this Committee. The same were forwarded to the Ministry of Social Justice and Empowerment, Department of Social Justice and Empowerment for their comments/clarifications. The comments/clarifications have since been received from the Ministry and are annexed (Annexure IV).

14. The Committee wishes to place on record its gratitude to the representatives of Ministries of Social Justice and Empowerment (Department of Social Justice and Empowerment) and Law and Justice (Legislative Department and Legal Affairs) for furnishing necessary information/documents and rendering valuable assistance to the Committee in its deliberations. The Committee also wishes to express its gratitude to all the distinguished persons who appeared before the Committee and gave their valuable views on the Bill and furnished written notes and information in connection with the examination of the Bill.

NEW DELHI;
19th July, 2017

BHUPENDER YADAV
Chairman,
Select Committee on the Constitution
(One Hundred & Twenty-third Amendment) Bill, 2017.

REPORT

Background

Statement of Objects and Reasons appended to the Constitution (One Hundred and Twenty-third Amendment) Bill, 2017, which was introduced in the Lok Sabha, states that the National Commission for the Scheduled Castes and Scheduled Tribes came into being consequent upon passing of the Constitution (Sixty-fifth Amendment) Act, 1990. The said Commission was constituted on the 12th March, 1992 replacing the Commission for the Scheduled Castes and Scheduled Tribes set up under the Resolution of 1987. Under article 338 of the Constitution, the National Commission for the Scheduled Castes and Scheduled Tribes was constituted with the objective of monitoring all the safeguards provided for the Scheduled Castes and the Scheduled Tribes under the Constitution or other laws.

2. Vide the Constitution (Eighty-ninth Amendment) Act, 2003, a separate National Commission for Scheduled Tribes was created by inserting a new article 338A in the Constitution. Consequently, under article 338 of the Constitution, the reference was restricted to the National Commission for the Scheduled Castes. Under clause (10) of article 338 of the Constitution, the National Commission for Scheduled Castes is presently empowered to look into the grievances and complaints of discrimination of socially and educationally backward classes also.

3. The first Commission for Backward Classes was set up in January, 1953 under article 340, which was chaired by Shri Kaka Saheb Kalelkar. The Report was submitted in 1955 by the Commission, which was placed before Parliament in September, 1956. The Commission recommended that census should be undertaken on caste basis. The second Backward Classes Commission under the chairmanship of Shri Bindeshwari Prasad Mandal was set up under article 340 in 1978. The Report was submitted in December, 1980. The Commission evolved eleven criteria for determining the socially and educationally backwardness.

4. Government of India accepted major recommendations of the Mandal Commission and issued orders in August, 1990 providing 27 per cent reservation for Other Backward Classes (OBC) in Central Civil posts.

5. The O.M. providing 27 per cent reservation of OBC in Central Government posts was challenged in the Indra Sawhney case. In the year 1992, the Supreme Court of India in the matter of Indra Sawhney and others Vs. Union of India and others (AIR 1993, SC 477) had observed the following, namely:—

"The Government of India, each of the State Governments and the Administration of Union Territories shall, within four months from today, constitute a permanent body for entertaining, examining and recommending upon requests for inclusion and complaints of over-inclusion and under-inclusion in the list of other backward classes of citizens. The advice tendered by such body shall ordinarily be binding upon the Government."

6. Pursuant to the said Judgment, the National Commission for Backward Classes Act was enacted in April, 1993 and the National Commission for Backward Classes was constituted on the 14th August, 1993 under the said Act. At present the National Commission for Backward Classes (NCBC) examines the requests for inclusion of any class of citizens as a backward class in the Central List and hear complaints of over-inclusion or under-inclusion of any backward class in such list and tender such advice

to the Central Government as it deems appropriate. Now, in order to safeguard the interests of the socially and educationally backward classes more effectively, it is proposed to constitute a National Commission for Backward Classes with constitutional status at par with the National Commission for Scheduled Castes and the National Commission for the Scheduled Tribes.

7. Parliament constituted the first Committee on Welfare of the Other Backward Classes under the chairmanship of Shri B.K. Handique. The Committee in its first Report presented on the 27th August, 2012 recommended that NCBC should be granted constitutional status by insertion of new article 338B and also be conferred the powers similar to that of National Commission for Scheduled Castes (NCSC). The Committee in its second Report on 25th April, 2013 recommended deletion of clause (10) of article 338 and insertion of new article 338B. In its third Report, the Committee reaffirmed its amendment proposed earlier regarding giving constitutional status to the NCBC.

8. The National Commission for the Scheduled Castes has also recommended in its Report in the year 2014-15 that the hearing of the grievances of the socially and educationally backward classes under clause (10) of article 338 should be given to the National Commission for Backward Classes.

9. The proposed amendments in the Constitution are as follows:—

- (i) Omission of reference to "such other backward classes" in clause (10) of article 338;
- (ii) Insertion of new article 342A to provide for the process of notification of socially and educationally backward classes;
- (iii) Insertion of clause (26C) in article 366 for defining the socially and educationally backward classes.

Deliberations of the Select Committee:

10. In its first meeting held on the 17th April, 2017 the Committee was briefed at length on the background in which the Bill under consideration was drafted and the history of the reservation for the backward classes. The Committee then sought clarifications on the following issues namely:—

- (i) whether there was any objective criterion laid down by the Supreme Court for deciding of basis of 'inclusion' and 'exclusion' of any notified class; (ii) what would be the status of the State Backward Classes Commissions after coming into force of the Bill under consideration; (iii) what would be the status of the existing list of OBCs after coming into effect of the Bill under consideration; (iv) what would be the role of the Governor in deciding about the inclusion or exclusion of classes in the OBC list.

11. The Committee was informed that the eleven indicators provided by the Mandal Commission would provide the broad framework for deciding the classes to be included in the Central list of socially and educationally backward classes (SEBCs) by the National Commission for Backward Classes. The Committee was informed that the proposed amendment was only to confer constitutional status to the National Commission for Backward Classes while the State Backward Classes Commissions would continue to function as earlier without any modifications. It was further informed that two Bills have been introduced in the Parliament, namely (i) the Constituion (One Hundred and Twenty-Third Amendment) Bill, 2017; and (ii) the National Commission for Backward Classes (Repeal) Bill, 2017 which provides for saving of the actions taken under the said Act.

12. It was further clarified that in respect of the backward classes, there are two lists *i.e.* the Central List and the State List. The Central List provides for education and

employment opportunities in Central Government Institutions as per laid down procedures. In the State List, the States are free to include or exclude in their backward classes List. This Constitutional amendment does not affect or alter in any way the present powers or functions of the State Backward Classes Commissions and their powers for exclusion or inclusion of backward classes in the State Backward classes list shall remain unchanged.

13. In its second meeting held on the 24th April, 2017 the Committee was briefed on the working of the National Backward Classes Development and Finance Corporation (NBCFDC). The Committee was of the opinion that conferring constitutional status to the NCBC would enable effective monitoring of the socio-economic development of the backward classes.

14. In its third meeting held on the 02nd May, 2017 the Committee was informed that the Supreme Court in its judgment in Indra Sawhney case had observed that "The Government of India, each of the State Governments and the Administration of Union territories shall, within four months from today, constitute a permanent body for entertaining, examining and recommending upon requests for inclusion and complaints of over-inclusion and under-inclusion in the list of other backward classes of citizens. The advice tendered by such body shall ordinarily be binding upon the Government".

15. Accordingly, the National Commission for Backward Classes Commission Act, 1993 was enacted and the National Commission for Backward Classes was constituted under the said Act.

16. In its fourth meeting held on the 15th May, 2017 the Committee held extensive discussions with experts working for the welfare of the backward classes. A brief synopsis of the issues are discussed in the subsequent paras:

17. Several experts and organisations felt that no changes or amendments are required to be made and any changes in the bill for further discussions will only delay the process to the detriment of the socially and educationally backward classes. Other suggestions like inclusion of women member in the Commission and number of members to be included in the Commission may be taken care of while framing the appropriate rules under the proposed provisions.

18. It was also submitted that the powers and functions of the State Government and the State Backward Classes Commissions with regard to identification, exclusion and inclusion of classes in the State List should be clarified. Further, the process of consultation with the Governor should also be clarified in the Bill.

19. In response to the above issues raised, the Ministry clarified that sub-clause (9) of article 338B does not in any way interfere with the powers of the State Governments to prepare their own list. The Committee was further informed that classes so included in the State Backward Classes List do not automatically come in the Central List of OBCs.

20. In its fifth meeting representatives/Members raised a concern about sub-clause (1) of article 342A, whether the list would be issued by the President after consultation with the State Government or consultation with only Governor of the State. It was clarified by the Ministry that clause (1) of article 154 and article 163 of the Constitution clearly state that the Governor shall act on the advice of the Council of Ministers. It is also clarified that under the above Constitutional provisions, the Governor shall exercise his authority either directly or indirectly through officers of respective State Government. Article 341 of the Constitution provides for consultation with Governor of State with respect to Scheduled Castes and article 342 of the Constitution provides consultation of President with Governor of State in respect of Scheduled Tribes. As is the practice, at no time has the State Government been excluded

in the consultation process. It is always invariably the State Government which recommends to the President the category of inclusion/exclusion in Scheduled Castes and Scheduled Tribes. Similar provision is provided for in the case of conferring of constitutional status for backward classes for inclusion in Central list of socially and educationally backward classes. Consultation with Governor thereby implies consultation with the State Government.

21. In its Sixth meeting the Committee took up the clause-by-clause consideration of the Bill as well as certain other concerns raised by the Members.

Clause-by-Clause consideration of the Bill

22. The Committee held clause-by-clause consideration of the Bill, the details of which are given below:

23. At the outset some members raised concerns over the constitutionality of the new Commission to be set up under article 338B instead of the creating it under the existing article 340. It was clarified that article 340 of the Constitution provided for creation of ad-hoc/temporary commissions like the Mandal Commission and Kaka Saheb Kalekar Commission. It was further explained that when constitutional status was conferred on the National Commission for Scheduled Tribes article 338A was inserted. Similarly, as a natural corollary, constitutional status is being conferred on the National Commission for Backward Classes under article 338B.

24. The Committee agreed to the explanations furnished by the Ministries and a view was taken that in order to provide Constitutional mechanism to hear the grievances of other backward classes, at appropriate place, article 340 is available in the Constitution for the purpose. So article 338B is considered to be the most appropriate place for providing constitutional status to the socially and educationally backward classes.

25. The Committee thereafter took up clause 2 for consideration:

Clause 2: amendment of article 338

26. Clause 2 of the Bill proposes to amend the clause (10) of article 338 of the Constitution so as to *omit* the words, brackets and figures "*to such other backward classes as the President may, on the receipt of the report of a Commission appointed under clause (1) of article 340, by order specify and also*".

27. Clause 2 of the Bill was adopted without any amendment.

Clause 3: insertion of new article 338B

28. Sub-clause (1) of article 338B provides for setting up of the National Commission for Backward Classes.

29. Some Members suggested the amendment to rename the proposed Commission as provided under sub-clause (1) of article 338B and which may be re-named as the National Commission for Socially and Educationally Backward Classes.

30. In response, the Ministry clarified that the nomenclature of the proposed Commission had been decided after inter-Ministerial consultation, and it was felt that calling it National Commission for Backward Classes was self explanatory in nature.

Composition of the Commission

31. Sub-clause (2) of the article 338B provides for the composition of the Commission and **sub-clause (3) of the article 338B** states that the proposed Commission shall consist of a Chairperson, Vice-Chairperson and three other Members to be appointed under the President's hand and seal.

32. Some Members suggested that qualifications of the Chairman and members of the Commission should be provided in the amendment. Some members also suggested

that the Chairperson could be a retired Judge of the Supreme Court/High Court and the Vice-Chairperson be from the OBC minority community. Further, one woman member should also be there and the Member-Secretary could be an officer of the level of Secretary to the Government of India. Other suggestions were to include social scientist and expert with special knowledge in matters relating to backward classes and atleast one member should be from a community categorized as most backward class or extremely backward class.

33. In response, the Ministry of Social Justice and Empowerment clarified that once the National Commission for Backward Classes Act, 1993 would be repealed, new rules will be framed and the views expressed by the Members would be given due consideration.

34. The Committee noted the clarification given by the Ministry in this regard.

Duties of the Commission

35. **Sub-clause (5) of the article 338B** provides the duties and functions of the Commission.

36. The Members suggested that sub-clause (c) of clause (5) of article 338B be amended and read as follows:

'to participate and advise on the planning process of the socio-economic development of the socially and educationally backward classes and to evaluate the progress of their development under the Union and any State'.

37. In response the Ministry of Social Justice and Empowerment, Department of Social Justice and Empowerment stated that all the sub-clause (5) of article 338B imply a participative role for the proposed Commission.

38. The Committee noted clarification given by the Ministry in this regard.

39. The Committee then took up the following amendments proposed by certain other Members:

On page 2, after line 11, two new sub-clauses (a) and (b) be added and the existing sub-clauses (a) to (f) be renumbered as (c) to (b). The new sub-clauses (a) and (b) be read as follows:

'(a) (i) To examine the draft list of socially and educationally backward classes to be submitted to President for public notification under article 342 A(1) and tender such advice to the Central Government as it deems appropriate.

(ii) The advice tendered by the Commission shall ordinarily be binding on the Central Government.

Provided that if the Central Government doesn't agree with the advice of the Commission, it shall record its reasons in writing and submit such reasons along with the draft list to the President.

(b) (i) To examine and advice the Central Government on the requests of inclusion or exclusion from the list of socially and educationally backward classes for the purpose of enabling the Parliament to amend this list under article 342A(2) and to hear complaints of over-inclusion and under-inclusion of any backward classes in such list and tender such advice to the Central Government as it deems appropriate.

(ii) The advice tendered by the Commission shall ordinarily be binding on the Central Government:

Provided that if the Central Government doesn't agree with the advice of the Commission, it shall record its reasons in writing and place the same before both Houses of Parliament'.

40. The Committee also took up the proposed amendment regarding insertion of a new sub-clause (g) in clause (5) of article 338B:

'to examine request for inclusion of any class of citizens as a backward class in the lists and hear complaints of over-inclusion or under-inclusion of any backward class in such lists and tender such advice to the Central Government as it deems appropriate'.

41. It was clarified by the Ministry of Social Justice that hearing of complaints by the proposed Commission has been provided under sub-clause (5) of article 338B and regarding examination of requests for inclusion of any class as a backward class, the same would be available to the Commission as a part of the modalities to be issued on enactment of the Bill.

42. The Committee then took up for consideration the amendment proposed by some Members in sub-clause (d) of clause (5) article 338B that the words "*and at such other times as the Commission may deem fit*" be deleted. The Committee discussed about the inordinate delay in laying the annual reports of different commissions/committees before the Parliament.

43. In response to this the Ministry of Social Justice and Empowerment clarified that the Annual Reports of the commissions are submitted to the President. The Ministry obtains Action Taken Reports from the States and various Ministries and lay on the Table of the Parliament. Apart from this, the Commission also submits two-three special reports like report on some incidence in a particular State. These are separate reports from the Annual Report.

44. The Committee noted the explanations furnished by the Ministry and hoped that the proposed Commission would lay its Annual Reports and other reports as well in time before the Parliament for its consideration.

45. The Committee took up for consideration the following amendments proposed by certain Members in sub-clause (8) of article 338B:

On page 2, for lines 41 and 42, the following shall be substituted, namely:

'(8) The Commission shall, while examining requests and complaints as referred to in sub-clauses (a) and (b) or investigating any matter referred to in sub-clause (c) or inquiring into any complaint referred to in sub-clause (d) of clause (5)'

46. In response to this, it was clarified that the Commission shall have, while investigating any matter referred to sub-clause (a) or inquiring into any complaint referred to in sub-clause (b) of clause (5), all the powers of Civil Court trying a suit.

47. The Committee discussed the amendment wherein in article 338B a new sub-clause (10) was proposed to be inserted. This sub-clause (10) would read as follows:

'Notwithstanding anything provided in clause 9, the State Government shall continue to have powers to identify Socially and Educationally Backward Classes'.

48. It was clarified by the Ministry of Social Justice and Empowerment to the Committee that the proposed amendment does not interfere with the powers of the State Governments to identify the Socially and Educationally Backward Classes. The existing powers of the State Backward Classes Commission would continue to be there

even after the passage of the Constitution (One Hundred and Twenty-third Amendment) Bill, 2017.

49. The Committee held discussions on each of the amendments proposed and in view of the satisfactory explanation given by the Ministry, the Committee adopted clause 3 without any amendments.

Clause 4: Insertion of New article 342A

50. The proposed article 342A provides the procedure for notification of socially and educationally backward classes.

51. The Committee then took up for consideration the following amendments proposed by certain Members namely:—

(i) Sub-clause (1) of article 342A be modified as follows:

"The President with respect to any State or Union Territory, and where it is a State, on the request made by the governor thereof, by public notification specify the socially and educationally backward classes for the purposes of making provisions for reservation of appointment to an office or posts under Government of India or under any authority of Government of India or under the control of the Government of India or seats in Central Government educational institutions";

(ii) Sub-clause (2) of article 342A be modified as follows:

"The President may, on the advise of the National Commission for Backward Classes include or exclude from the Central list of socially and educationally backward classes specified in a notification issued under clause (1).";

(iii) In article 342A insert clause (3) as follows:

"The Governor of a State, by public notification specify the socially and educational backward classes for the purposes of making provisions for reservation of posts under that State or under any other authority of the State or under the control of the State, or seats in the educational institutions within that State" and

(iv) In article 342A insert clause (4) as follows:

"The Governor may, on the advice of the State Commission of Backward Classes include or exclue from the State list of socially and educationally backward classes specified in a notification issued under clause (3)"

52. Another set of amendments proposed by some Members on Clause 4 were as follows:—

(i) Sub-clause (1) of article 342A, be modified as follows:—

"The President may with respect to any State or Union territory, and where it is a State, only with prior recommendation of the State Government and giving due regard to such recommendation, by public notification, specify the socially and educationally backward classes which shall be deemed to be the Central List of socially and educationally backward classes in relation to that State or Union territory, as the case may be.

(ii) After sub-clause (2) of article 342A, the following be inserted namely:—

(3) "Every state Government may, by public notification, specify the socially and educationally backward classes in that State which shall be deemed to be the State List of socially and educationally backward classes in relation to that State.

(4) The State may by law include in or exclude from the State List of socially and educationally backward classes specified in a notification issued under clause (3) any socially and educationally backward class, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification"

53. Another set of amendments proposed by some Members on Clause 4 were as follows:

Article 342A (1):— On page 3, after line 19, the following shall be inserted, namely:

'Provided that such public notification shall be issued on the basis of advice tendered by the Commission under article 338B (5) (a) and shall be placed in both Houses of Parliament as soon as possible after issuance:

Provided further that the consultation with the Governor of a State shall be on the basis of advice tendered to the Governor by the State Commission of Backward Classes of that State.'

Article 342(2):— On page 3, after line 23, the following lines shall be inserted, namely:

'Provided that such a law is based on the advice tendered by the Commission under article 338B (5)(b).'

Article 342A (3):— On page 3, after article 342A (2), a new clause be added, namely:

'342A (3) — The Central Government may at any time, and shall, at the expiration of ten years from the coming into force of the list notified under article 342A (1), and every succeeding period of ten years thereafter, on advice of the Commission, undertake revision of the list with a view to exclude those classes who have ceased to be backward classes or for including in such list new backward classes.'

54. The Ministry, on the amendments moved, clarified that time bound decadal revision of lists by the proposed Commission, is a continuous process. The Commission however, is empowered to enquire into specific complaints with respect to the deprivation of right and safeguards of the socially and educationally backward classes.

55. The Ministry clarified that the aspect of reservation of posts under that State or under any other authority of the State or under the control of the State, or seats in the educational institutions within that State was beyond the purview of the instant Bill and hence the amendments proposed are not allowed.

56. It was clarified by the Ministry that clause (1) of article 154 and article 163 of the Constitution clearly state that Governor shall act on the advice of the Council of Ministers. It was informed that under the above Constitutional provisions the Governor shall exercise his authority either directly or indirectly through officers of respective State Government. Article 341 of Constitution provides for consultation by the President with Governor of State with respect to Scheduled Castes and article 342 of the Constitution provides consultation by the President with Governor of State in respect of Scheduled Tribes. As is the practice at no time has the State Government been excluded in the consultation process. It is always invariably the State Government which recommends to the President the category of inclusion/exclusion in Scheduled Castes and Scheduled Tribes. Similar provision is provided for in the case of conferring of constitutional status for backward classes for inclusion in Central list of SEBC. Consultation with Governor thereby implies consultation with the State Government.

57. The Ministry also clarified to the Committee that the phrase "for the purpose of this Constitution" as provided under clause (1) of article 342A is on lines similar to article 341 and 342 of the Constitution. The setting up of the proposed Commission will not be retrograde to the interest of the socially and educationally backward classes. The article 342A will provide for a comprehensive examination of each case of inclusion/exclusion from the Central List. the ultimate power for such inclusion/exclusion would stand vested with the Parliament.

58. The Committee held discussions on the proposed amendments and in view of the detailed explanations furnished by the Ministry, the Committee adopted the Clause 4 of the Bill without any amendments.

Clause 5: Provides for amendment of article 366.

59. This Clause proposes to insert a new clause (26C) in article 366 which reads as under:—

"(26C) socially and educationally backward classes" means such backward classes as are so deemed under article 342A for the purposes of this Constitution;"

60. The Clause 5 of the Bill was adopted without any amendments.

Clause 1: Enacting formula and the Title of the Bill

61. Clause 1 provides the Short Title of the Bill and commencement of the Constitution (One Hundred and Twenty-third Amendment) Bill, 2017.

62. The Clause 1 Enacting Formula and the Title of the Bill was adopted without any amendments.

GENERAL OBSERVATIONS

63. The Committee took into consideration the concerns of the Members regarding timely submissions of the Annual Report and other special reports of the proposed National Commission for Backward Classes. The Committee noted that in many instances such reports come before the Parliament after a long gap and by the time the issue has lost relevance and the matter is not discussed in the House. The Committee therefore advises the Ministry of Social Justice and Empowerment to ensure that keeping in view the social significance of the proposed Commission its Annual Report and other Reports may be prepared in time and laid before the Parliament and for the information of public at large.

64. The Committee also noted the views of the Members and other experts/organizations who appeared before the Committee that the proposed National Commission for Backward Classes should have a participative role in the planning process of the socio-economic development of the socially and educationally backward classes. The Committee also noted that explanation furnished by the Ministry of Social Justice and Empowerment that all the sub-clauses under article 338B(5) imply a participative role for the proposed Commission.

65. The Committee accepted the explanations furnished by the Ministry. However, the Committee was of the view that the Ministry should ensure that the proposed Commission plays an active participative role in the planning process of the socio-economic development of the socially and educationally backward classes both in letter and spirit as contained in the different clauses of the Bill.

66. The Committee feels that the Constitutional Amendments proposed in this Bill would further strengthen affirmative action in favour of socially and educationally backward classes as well as further boost concept of cooperative federalism between the Centre and States.

67. The Committee observes that the amendments do not in any way affect the independence and functioning of State Backward Classes Commissions' and they will continue to exercise unhindered their powers of inclusion/exclusion of other backward classes with relation to State List.

68. The Committee also took note of the concerns raised by some Members regarding the composition of the Commission and would like to impress upon the Ministry that while addressing the concerns of the Members the rules framed for the Chairperson and members of the National Commission for Scheduled Castes and National Commission for Scheduled Tribes may be taken into consideration. The Committee is of the view that while framing the rules for composition of the proposed Commission and selection of its Chairperson it should be ensured that the persons belonging to socially and educationally backward classes be given due representation who inspire confidence amongst the socially and educationally backward classes. It may further be ensured that at least one woman member is part of the Commission.

69. The Committee hopes that the Bill would bring a sea change by putting in place effective and efficient delivery mechanism for the welfare of socially and educationally backward classes.

Note of Dissent

Sukhendu Sekhar Roy, M.P.

Date: 14th July, 2017

To

SHRI BHUPENDER YADAV
Hon'ble Chairman
SELECT COMMITTEE ON
THE CONSTITUTION (ONE HUNDRED
AND TWENTY THIRD AMENDMENT) BILL, 2017
PARLIAMENT HOUSE
NEW DELHI

Sub: Note of Dissent

Re: Constitution (One Hundred and Twenty Third Amendment) Bill, 2017

Sir,

As per the RULES OF PROCEDURE AND CONDUCT OF BUSINESS IN THE COUNCIL OF STATE and as a member of the SELECT COMMITTEE I am forwarding herewith with a note of dissent.

Kindly incorporate my note of dissent in the report of the select committee in relation to Constitution (One Hundred and Twenty Third Amendment) Bill, 2017.

Encl.: As Stated.

Regards,

Sd/-

Sukhendu Sekhar Roy, M.P.

APPENDIX I

**Re: The Constitution (One Hundred and Twenth Third Amendment)
Bill, 2017 (As passed by Lok Sabha)****Sub: Notes of Dissent**

In paragraph 3 of the statement of Objects and Reasons of the above referred Bill, it is *inter alia* mentioned that ".....the Supreme Court of India in the matter of Indra Sawhney and Others Vs. Union of India (AIR 1993, SC 477) had directed the Government of India to constitute a permanent body for entertaining, examining and recommending requests for inclusion and complaints of over-inclusion and under-inclusion in the Central List of other Backward Classes.....Now, in order to safeguard the interests of the socially and educationally backward classes more effectively, it is proposed to create a National Commission for Backward Classes with constitutional status at par with the National Commission for Scheduled Casts and the National Commission for Scheduled Tribes."

In fact, the Hon'ble Supreme Court delivered the said judgment directing *inter alia* to constitute a permanent body, in the nature of a Commission or Tribunal, both at the Central Level and at the level of the States under Article. 16(4) read with Article 340 as a concomitant of the power to identify and specify backward classes of citizens in whose favour reservations are to be provided.

The operative portion of the said order and judgment has been more fully described in the Paragraph 117 of the Supreme Court judgment, which is reproduced below for ready reference.

Paragraph 117 of the judgment—Indra Sawhney & Ors. Vs. UOI (AIR 1993, SC 477)

"We are of the considered view that there ought to be a permanent body, in the nature of a Commission or Tribunal, to which complaints of wrong inclusion or non-inclusion of groups, classes and sections in the lists of other Backward Classes can be made. Such body must be empowered to examine complaints of the said nature and pass appropriate orders. Its advice/opinion should ordinarily be binding upon the Government. Where, however, the Government does not agree with its recommendation, it must record its reasons therefor. Even if any new class/group is proposed to be included among other backward classes, such matter shall also be referred to the said body in the first instance and action taken on the basis of its recommendation. The body must be composed of the experts in the field, both official and non-official, and must be vested with the necessary powers to make a proper and effective inquiry. **It is equally desirable that each State constitutes such a body, which step would go a long way in redressing genuine grievances. Such a body can be created under Clause (A) of the Article 16 itself-or under Article 16(4) read with Article 340-as a concomitant of the power to identify and specify backward class of citizens in whose favour reservations are to be provided. We direct that such a body be constituted both at Central level and at the level of the states within four months from date....."**(emphasis supplied).

Needless to mention that the aforesaid judgment is, for all practical purposes, considered to be a law declared by the Supreme Court under Article 141 of the Constitution of India.

It would appear from the spirit of the verdict that the Hon'ble Supreme Court *vide* the said judgment directed both the Centre and the State to perform their respective duties and functions in the matter of identifying and specifying backward classes of citizens in whose favour reservations are to be provided within their respective jurisdictions. Needless to say that the provisions under Article 16(4) and 300 are constitutional provisions.

The Supreme Court *vide* Paragraph 119(b) of the said judgment observed *inter alia* that "**Strictly speaking, appointment of a Commission under Article 340 is not necessary to identify the other backward classes. Article 340 does not say so. According to it, the Commission is to be constituted to investigate the conditions of socially and educationally backward classes.....And the difficulties under which they labour and to make recommendations as to the steps that should be taken of the Union or any State to remove such difficulties.....**"

In spite of the orders and directions contained in the aforesaid judgment and/or the observations made therein, which also form part of the said judgment, more fully described hereinabove, the present Bill proposes to amend Article 338A and to insert article 338B in the Constitution of India to form a National Commission with sweeping powers and centralised authority not only to investigate and monitor all matters relating to the safeguards provided for the socially and backward classes under the Constitution or under any other law. "but also " to advise on the socio-economic development of the socially and educationally backward classes and to evaluate the progress of their development" **Under the Union and any State**, and to discharge such other functions as may be prescribed.

The Bill also proposes to insert Article 342A whereby the President may specify the socially and educationally backward classes which shall be deemed to be socially and educationally backward classes and where it is a State the President may do so in consultation with the Governor.

On a careful analysis of the provisions of the present Bill *vis-a-vis* the Hon'ble Supreme Court's judgment in *Indra Sawhney and Others Vs. Union of India* as referred to above and in the light of the discussions made hereinbefore, I am of the view that The Constitution Amendment (one Hundred And Twenty Third Amendment) Bill, 2017 will deprive the States in making provisions for the socially and educationally Backward Classes under Article 15(4) of the Constitution of India.

Secondly, the proposed amendments to the Constitution of India through the present Bill appear to be against the spirit of co-operative federalism.

Thirdly, the proposed amendment to the Constitution through this Bill undermine the role of the State Governments and the State Commissions for Backward Classes.

Fourthly, the proposed amendments to the Constitution of India through this Bill will be a hindrance to the development of particular communities who may have inadequate representation in the State.

Fifthly, Article 1(1) of the Constitution of India envisages that "**India, that is Bharat, shall be a Union of States**" and not a unitary state. But the Constitution (One Hundred and Twenty Third Amendment) Bill 2017 prescribes for a unitary authority which in effect shall encroach upon the jurisdiction of the States in the matter of identifying and specifying the socially and educationally backward classes and promotion of welfare thereof and affect thereby the federal character which is the basic structure of the Constitution.

In view of the aforesaid, I am not in favour of the Constitution (One Hundred and twenty third) Amendment Bill, 2017 and hence it is opposed.

Sd/-

Sukhendu Sekhar Roy, M.P.

APPENDIX II

Note of Dissent

Digvijaya Singh, M.P.
B.K. Hariprasad, M.P.
Husain Dalwai, M.P.

To,

The Chairman
Select Committee on the Constitution (One Hundred and Twenty-
Third Amendment) Bill, 2017
New Delhi

Dear Sir,

We fully support giving Constitutional Status to the Socially and Educationally Backward Classes Commission.

But must humbly submit Amendments to the proposed Bill to give it a more representative character to protect the interests of Socially and Educationally Backward Classes in India.

Therefore we are submitting our Note of dissent.

CLAUSE 3

1. That at page 2 for lines 2 and 3 the following be substituted namely:—

"338B. (1) There shall be a Commission for the Backward Classes to be known the National Commission for Socially and Educationally Backward Classes".

2. That at page 2, line 5, for the words "three other Members" the words "five other Members belonging to Backward Classes of which one shall be woman and one at least shall be from Minority Community" may be inserted.

3. That at page 2, after line 11, two new sub-clause (a) and (b) be added and the existing sub-clauses (a) to (f) be renumbered as (c) to (h). The new sub-clauses (a) and (b) be read as follows:

(a) (i) To examine the draft list of socially and educationally backward classes to be submitted to President for public notification under article 342A(1) and tender such advice to the Central Government as it deems appropriate.

(ii) The advice tendered by the Commission shall ordinarily be binding on the Central Government:

Provided that if the Central Government doesn't agree with the advice of the Commission, it shall record its reason in writing and submit such reasons along with the draft list to the President.

(b) (i) To examine and advice the Central Government on the request of inclusion or exclusion from the list of socially and educationally backward classes for the purpose of enabling the Parliament to amend this list under Article 342A(2) and to hear complaints of over inclusion and under inclusion of any backward classes in such list and tender such advice to the Central Government as it deems appropriate.

(ii) The advice tendered by the Commission shall ordinarily be binding on the Central Government:

Provided that if the Central Government doesn't's agree with the advice of the Commission, it shall record its reasons in writing and place the same before both the Houses of Parliament.

3. That at page 2, sub-clause 5(c) line 18 instead of "to advice on" add "to participate and advice on the planning process".

4. That at page 3, sub-clause (9) line 13 after "backward classes" add "NCBC should consult the State Government for any State specific issues".

CLAUSE 4

That at page 3, line 16 for the words "after consultation with" the words "after obtaining the consent of" be inserted.

That at page 3 line 20 sub-clause (2) should be replaced as "The President may, on the advice of the National Commission for Socially and Educationally Backward Classes include or exclude from the Central list of socially and educationally backward classes specified in a Notification issued under sub-clause (1)."

Also it has been noted that for long period posts of Commission Members Vice Chairman and Chairman are left vacant. Therefore we would like to add after para 20 of page 6 another para 20A to be read as.

Your's sincerely,

Sd-

Digvijaya Singh, M.P.

Sd-

B.K. Hariprasad, M.P.

Sd-

Husain Dalwai, M.P.

APPENDIX III

SHARAD YADAV
Member of Parliament (Rajya Sabha)
CHAIRMAN
Parliamentary Standing Committee
on Industry



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After the recommendations of Mandal Commission and judgement of Hon'ble Supreme Court in the case of Indira Sahney, an expert body was constituted under National Commission for Backward Classes Act, 1993. I am of the firm view that in the end of the Bill in Parliament *i.e.* The National Commission for Backward Classes (Repeal) Bill, 2017 it may be mentioned that the body under this Act shall have constitutional status on the lines of National Commission for Scheduled Castes and Scheduled Tribes and there is no need of any other inclusion and exclusion of the clauses. Further, I am of the view that inclusion and exclusion of castes and approval thereof shall not be left on Governor, Parliament and the President as it will be a step backward, and as such the decision of National Commission for Socially and Educationally Backward Classes (NCSEBC) shall be binding on the Government and also there shall not be any change in the existing role of the State Governments for inclusion and exclusion of castes.

Sd/-

(SHARAD YADAV)

Shri Bhupender Yadav, M.P.,
Hon'ble Chairman,
Select Committee on the Constitution (One Hundred and Twenty-third
Amendment) Bill, 2017,
New Delhi

Bill No. 71-C of 2017**THE CONSTITUTION (ONE HUNDRED AND TWENTY-THIRD
AMENDMENT) BILL, 2017**

A

BILL*further to amend the Constitution of India.*

BE it enacted by Parliament in the Sixty-eighth Year of the Republic of India as follows:—

Short title and
commencement.**1.** *(1)* This Act may be called the Constitution (One Hundred and Second Amendment) Act, 2017.**(2)** It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.Amendment
of article
338.**2.** In article 338 of the Constitution, in clause (10), the words, brackets and figures "to such other backward classes as the President may, on receipt of the report of a Commission appointed under clause *(1)* of article 340, by order specify and also" shall be omitted.

3. After article 338A of the Constitution, the following article shall be inserted, namely:—

Insertion of
new article
338B.

“338B. (1) There shall be a Commission for the socially and educationally backward classes to be known as the National Commission for Backward Classes.

National
Commission
for Backward
Classes.

(2) Subject to the provisions of any law made in this behalf by Parliament, the Commission shall consist of a Chairperson, Vice-Chairperson and three other Members and the conditions of service and tenure of office of the Chairperson, Vice-Chairperson and other Members so appointed shall be such as the President may by rule determine.

(3) The Chairperson, Vice-Chairperson and other Members of the Commission shall be appointed by the President by warrant under his hand and seal.

(4) The Commission shall have the power to regulate its own procedure.

(5) It shall be the duty of the Commission—

(a) to investigate and monitor all matters relating to the safeguards provided for the socially and educationally backward classes under this Constitution or under any other law for the time being in force or under any order of the Government and to evaluate the working of such safeguards;

(b) to inquire into specific complaints with respect to the deprivation of rights and safeguards of the socially and educationally backward classes;

(c) to advise on the socio-economic development of the socially and educationally backward classes and to evaluate the progress of their development under the Union and any State;

(d) to present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards;

(e) to make in such reports the recommendations as to the measures that should be taken by the Union or any State for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the socially and educationally backward classes; and

(f) to discharge such other functions in relation to the protection, welfare and development and advancement of the socially and educationally backward classes as the President may, subject to the provisions of any law made by Parliament, by rule specify.

(6) The President shall cause all such reports to be laid before each House of Parliament along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the Union and the reasons for the non-acceptance, if any, of any of such recommendations.

(7) Where any such report, or any part thereof, relates to any matter with which any State Government is concerned, a copy of such report shall be forwarded to the Governor of the State who shall cause it to be laid before the Legislature of the State along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the State and the reasons for the non-acceptance, if any, of any of such recommendations.

(8) The Commission shall, while investigating any matter referred to in sub-clause (a) or inquiring into any complaint referred to in sub-clause (b) of clause (5),

have all the powers of a civil court trying a suit and in particular in respect of the following matters, namely:—

- (a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;
- (b) requiring the discovery and production of any document;
- (c) receiving evidence on affidavits;
- (d) requisitioning any public record or copy thereof from any court or office;
- (e) issuing commissions for the examination of witnesses and documents;
- and
- (f) any other matter which the President may, by rule, determine.

(9) The Union and every State Government shall consult the Commission on all major policy matters affecting socially and educationally backward classes.

Insertion of new
article 342 A.

4. After article 342 of the Constitution, the following article shall be inserted, namely:—

Socially and
educationally
backward
classes.

"342A. (1) The President may with respect to any State or Union territory, and where it is a State, after consultation with the Governor thereof, by public notification, specify the socially and educationally backward classes which shall for the purposes of this Constitution be deemed to be socially and educationally backward classes in relation to that State or Union territory, as the case may be.

(2) Parliament may by law include in or exclude from the Central List of socially and educationally backward classes specified in a notification issued under clause (1) any socially and educationally backward class, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification."

Amendment
of article 366.

5. In article 366 of the Constitution, after clause (26B), the following clause shall be inserted, namely:—

“(26C) "socially and educationally backward classes" means such backward classes as are so deemed under article 342A for the purposes of this Constitution;”.

ANNEXURE I

Parliamentary Bulletin Part-II

No. 56502 Wednesday, April, 12, 2017 Committee Co-ordination Section

Reference of Constitution (One Hundred and twenty-third Amendment) Bill, 2017,
to a Select Committee of Rajya Sabha

As members are aware that the Rajya Sabha, at its sitting held on the 11th April, 2017, adopted the following motion referring the Constitution (One Hundred and Twenty-third Amendment) Bill, 2017 to a Select Committee of the Rajya Sabha:—

"That the Bill further to amend the Constitution of India, as passed by Lok Sabha, be referred to a Select Committee of the Rajya Sabha consisting of the following Members:—

1. Shri Bhupender Yadav
2. Shri Chunibhai Kanjibhai Gohel
3. Dr. Vikas Mahatme
4. Shri Ram Narain Dudi
5. Shri B.K. Hariprasad
6. Shri Madhusudan Mistry
7. Shri Digvijaya Singh
8. Shri Husain Dalwai
9. Prof. Ram Gopal Yadav
10. Shri Sharad Yadav
11. Shri Sukhendu Sekhar Roy
12. Shri A. Navaneethakrishnan
13. Shri Satish Chandra Misra
14. Shri T.K. Rangarajan
15. Shri Dilip Kumar Tirkey
16. Shri C.M. Ramesh
17. Shri Praful Patel
18. Shrimati Kanimozhi
19. Shri Anil Desai
20. Shri Naresh Gujral
21. Mir Mohammad Fayaz
22. Shri Biswajit Daimary
23. Shri Rajeev Chandrasekhar
24. Shri Swapan Dasgupta
25. Shri Ram Kumar Kashyap

With instructions to report to the Rajya Sabha by the last day of the first week of the next Session".

2. The Chairman, Rajya Sabha has appointed Shri Bhupender Yadav, Member, Rajya Sabha, to be the Chairman of the Committee.

Shumsher K. Sheriff
Secretary-General

*ANNEXURE II***List of witnesses who appeared before the Select Committee**

1. Dr. K. Veeramani, President, Dravidar Kazhagam;
2. Justice (Retd.) V. Eswaraiah, Former Chairman, National Commission for Backward Classes (NCBC);
3. Shri S.K. Kharventhan, Ex-M.P. (Lok Sabha) & Former Member, NCBC;
4. Shri G. Karunanidhy, General Secretary, All India Federation of OBC Employees' Welfare Association;
5. Shri Kapil Harishchand Patil, MLC, Maharashtra Legislative Council;
6. Shri Ryaga Krishnaiah, MLA, Telangana Legislative Assembly;
7. Shri Haribhau Rathod, Ex-M.P. and MLC, Maharashtra Legislative Council;
8. Shri P.S. Krishnan, Former Secretary, Ministry of Welfare;
9. Shri Sahu Akshay Bhai, Chief Co-ordinator, National Council for Most Backward Classes;
10. Shri Guduri Venkateswara Rao, President, All India BC Praja Welfare Association;
11. Prof. P.C. Patanjali, Chairman, Pichada Varg Vikas Manch;
12. Shri Hasib A. Aziz Nadaf;
13. Prof. Prakash Sonawane;
14. Shri Hansraj, President, Most Backward Classes Mahasangh;
15. Shri Vishvanath Patil, President, Kunbi Sena Ram Wadi;
16. Shri Shabbir Ahmed Ansari, All India Muslim OBC Organisation;
17. Dr. Kailash Goud, Ex-Member, Maharashtra State Backward Class Commission;
18. Shri Haji Shoukat Bhai Tamboli.

ANNEXURE III

Dr. Dilip Kumar Tirkey
Padamshree & Arjun Awardee
Member of Parliament, Rajya Sabha



Leader BJD Parliamentary Party
Member :
Standing Committee on Coal Steel & Mines

Committee Section
(Sub-Legislation)
Diary No. 41

Date 9-6-2017

Sh. Bhupender Yadav
Hon. Chairman,
Select Committee on the Constitution (123rd Amendment) Bill, 2017

Sub: Suggestion of amendments in the aforesaid Bill.

Respected Sir,

I, as a member of the Select Committee of Rajya Sabha constituted for examining the Constitution (123rd Amendment) Bill, 2017, wish to offer following suggestions and amendments in the present Bill:

1. On page 3, in line 16, “after consultation with the Governor thereof” may be substituted with “only with prior recommendation of the State Government and giving due regard to such recommendation.”
2. On page 3, in lines 17 and 18, the phrase “for the purpose of this Constitution” may be omitted.
3. On page 3, in lines 18 after “deemed to be”, the phrase “the central List of” may be inserted.
4. On page 3, after line 23 following two paragraphs may be inserted:

(3) “Every state Government may, by public notification, specify the socially and educationally backward classes in that State which shall be deemed to be the State List of socially and educationally backward classes in relation to that State.

(4) The State may by law include in or exclude from the State List of socially and educationally backward classes specified in a notification issued under clause(3) any socially and educationally backward class, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.”

With Best Regards,

Sd/-

(Dilip Kumar Tirkey)

Mr. Bhupender Yadav
Member of Parliament
Hon'ble Chairman-Select Committee on
The Constitution (123rd) Amendment Bill, 2017
New Delhi

30 June, 2017

Respected Chairman,

After Careful consideration of the provisions of the Constitution (123rd) Amendment Bill, 2017 and submissions made before the Select Committee, I would like present the following submission:

The Dravida Munnetra Kazhagam welcomes the passage of the Constitution (123rd) Amendment Bill, 2017. This is a historic social Justice Legislation with the inherent power to impact hundreds of millions of Indian citizens of today and many more in years to come. While doing so, I wish to highlight the political narrative in the upliftment of backward classes and also offer some suggestions on how the Bill, in its present form, may be improved.

It is a matter of great pride to us that the predecessors of the Dravida Munnetra Kazhagam (DMK) *i.e.* Justice Party passed the Communal G.O. during the justice Party Government in Madras Presidency. This happens to be the first ever government to provide reservation in education and employment and set us on the path of social justics. When the Communal G.O. Struck down by the Suprme Court in the case of State of Madras v. Champakam Dorairajan 1951, the leader of Drividar Kazhagam Thanthai Pariyar led protests against the vardict. This prompted Pandit Jawaharlal Nehru and Dr. Babasahed Ambedkar to amend the Constitution for the very first time. This, in short, was how the povision for making special provisions, in the form of reservations, for Scheduled Castes (SC), Scheduled Tribes (ST) and Other Backward Classes (OBC) was given Constitutional Sanctity. For sake of clarity and convenience, the inserted Article 15(4) is produced here:

"Nothing in this article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes."

Therefore, the definition of Other Backward Classes that was conceived is: those belonging to socially and educationally backward classes of citizens who are not Scheduled Castes or Scheduled Tribes. More than four decades later, the government order on the Mandal Commission Report, was the subject matter of the Indra Sawhney v. Union of India 1992 case. In paragraph number 847 of this judgement, the Supreme Court has made the following order:

"We are of the considered view that there ought to be a permanent body, in the nature of a Commission or Tribunal, to which complaints of wrong inclusion or non-inclusion of groups, classes and sections in the lists of Other Backward Classes can be made. Such body must be empowered to examine complaints of the said nature and pass appropriate orders. Its advice/opinion should ordinarily be binding upon the Government. Where, however, the Government does not agree with its recommendation, it must record its reasons therefor. Even if any new class/group is proposed to be including among the other backward classes, such matter must also be referred to the said body in the first instance and action taken on the basis of its recommendation. The body must be composed of

experts in the field, both official and non-official, and must be vested with the necessary powers to make a proper and effective inquiry. It is equally desirable that each State constitutes such a body, which step would go a long way in redressing genuine grievances. Such a body can be created under clause (4) of Article 16 itself—or under Article 16(4) read with Article 340—as a concomitant of the power to identify and specify backward class of citizens, in whose favour reservations are to be provided. We direct that such a body be constituted both at Central level and at the level of the States within four months from today. They should become immediately operational and be in a position to entertain and examine forthwith complaints and matters of the nature aforementioned, if any, received. It should be open to the Government of India and the respective State Governments to devise the procedure to be followed by such body. The body or bodies so created can also be consulted in the matter of periodic revision of lists of OBCs. As suggested by Chandrachud, CJ in Vasanth Kumer [1985 Supp SCC 714: 1985 Supp 1 SCR 352] there should be a periodic revision of these lists to exclude those who have ceased to be backward or for inclusion of new classes, as the case may be."

This was the basis for setting up the National Commission for Backward Classes in 1993. The present Constitution (123rd) Amendment Bill, 2017 seeks to provide a Constitutional status for the National Commission for Backward Classes along the lines of the National Commission for Scheduled Castes and National Commission for Scheduled Tribes. But, such an endeavour must not take place at the expense of the rights traditionally enjoyed by the states.

State Governments have been identifying Backward Classes and taking up measures for their welfare right from Independence and even before the current National Commission for Backward Classes was instituted. In Tamil Nadu, the State Government, during the first ever Dravida Munnetra Kazhagam regime, appointed Backward Classes Commission under the leadership of A.N. Sattanathan in 1969. The Sattanathan Commission report, on the basis of educational and social backwardness and occupation of members of that caste, suggested the division of Backward Classes into two: Backward Classes and Most Backward Classes. These suggestions were also adumbrated in the Judgement of Hon'ble Supreme Court of India, delivered in Indra Sawhney case. Another Commission led by J.A. Ambashanker was constituted to study the extent of backwardness in 1982. Therefore, any new Constitutional body being created now must not displace the State from their traditional and integral role in the empowerment of backward classes.

Article	Bill Passed by Lok Sabha	Suggested Changes	Explanation
338B, Clause 5	Sub-clause (c) to advise on the socio-economic development of the socially and educationally backward classes and to evaluate the progress of their development under the Union and any state;	Modify: Sub-clause (c) to participate and advise on the planning process of socio-economic development of the socially and educationally backward classes and to evaluate the progress of their development under the Union and any state.	To bring it in line with similar provisions in Article 338 and Article 33A which deal with National Commissions for Scheduled Castes and Scheduled Tribes, respectively.
338B, Clause 5	No sub-clause (g)	Insert: (g) to examine request for inclusion of any class of citizens as a backward class in the lists and hear complaints of over-inclusion or under-inclusion of any backward classes in such lists and tender such advice to the Central Government as it deems appropriate.	To explicitly provide National Commission for Backward Classes with powers to examine requests for inclusion and to hear complaints.
338B, Clause 10	No Clause 10	Insert: Clause 10, Notwithstanding anything provided in Clause 9, the State Government shall continue to have the powers to identify Socially and Educationally Backward Classes.	To protect the autonomy and rights of the State Governments.
342A, Clause 1	The President may with respect to any State or Union territory, and where it is a State, after consultation with the Governor thereof, by public notification specify the socially and educationally backward classes which shall for the purposes of this Constitution be deemed to be socially and educationally backward classes in relation to that State or Union territory, as the case may be.	Modify: The President may with respect to any State or Union territory, and where it is a State, on the request made by the Governor thereof, by public notification, specify the socially and educationally backward classes for the purposes of making provisions for reservation of appointment to an office or posts under the Government of India or under any authority of Government of India or under the control of the Government of India or seats in Central Government educational institutions.	To ensure that National Commission for Backward classes advises the Central Government in a manner similar to how State Commissions advise State Governments.

Article	Bill Passed by Lok Sabha	Suggested Changes	Explanation
342A, Clause 2	The President may by law include in or exclude from the Central List of socially and educationally backward classes specified in a notification issued under Clause (1) any socially and educationally backward class, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.	Insert: The President may, on the advise of the National Commission for Backward Classes, include or exclude from the Central List of socially and educationally backward classes specified in a notification issued under Clause (1)	The President is guided by the systematic, specialized and scientific recommendations of the National Commission in this endeavour.
342A, Clause 3	No Clause 3	Insert: The Governor of a State, by public notification, specify the socially and educationally backward classes for the purposes of making provisions for reservation of posts under that State or under any other authority of the State or under the control of the State or seats in the educational institutions within that State.	The Governor, and State Government, retain their powers to implement reservation policies as per the localised conditions and circumstances.
342A, Clause 4	No Clause 4	Insert: The Governor may, on the advise of the State Commission for Backward Classes, include or exclude from the State List of socially and educationally backward classes specified in a notification issued under Clause (3).	The powers of Governor with regard to State List equivalent to powers of President with regard to Central List.

The three major historical milestones in the Backward Classes Movement in this country are:—

1. Issuance of Communal G.Os. in 1921 and implemented as per G.O. in 1927 by the Government of Justice Party
2. First Constitutional Amendment in 1951
3. Judgement of Supreme Court in Indra Sawhney (1993) case

There can be little doubt that the next major milestone will be the passage of the Constitution (123rd) Amendment Bill, 2017. With the weight of historical achievements guiding us and the expectations of millions of backward citizens propelling us, we must ensure that the Constitutional Amendment lives up to its promise. To this extent, I request that my suggested changes to the present Bill be considered by this Select Committee in its submission to the Parliament.

Sincerely,

Kanimozhi.

B.K. HARIPRASAD
MEMBER OF PARLIAMENT
(RAJYA SABHA)



C 1/10, Lodhi Garden
New Delhi-110 003
Ph: Off. 23793820
Res. 24647664

Dear Sir,

I am forwarding my proposals for the amendments to the Constitution (One Hundred and Twenty-Third Amendment) Bill, 2017. This is for your kind consideration to incorporate them in our report.

All the amendments which have been referred would strengthen the intent of the Bill in favour of the Backward Classes.

My suggestions are enclosed herewith.

With Regards

Yours sincerely

Sd/-

(B.K. Hariprasad)

03.07.2017.

Chairman
Select Committee of Rajya Sabha on the Constitution (One Hundred and Twenty Third Amendment) Bill, 2017
New Delhi

Explanatory Note:**My request for modification in said bill based on;**

- (a) Personal observation with reference to the existing society.
- (b) Nine Judges judgement of Hon'ble Supreme Court in Indra Sawhney and others Vs. Union of India and others (AIR 1993, SC 477).
- (c) To save the federal structure of India.

Suggestions:

1. **Sub-Article (2) of article 338B** Clears the Members and Chairperson of the NCBC but qualification is not specified, whereas, the NCBC Act, 1993 under section 3(2), provided the qualifications and we may also refer the "para 847 of Supreme Court Judgment on (AIR 1993, SC 477), that;

Chairperson should be a Former judge for judicial approach; member secretary should be a former secretary level officer of GOI, a social scientist and two persons with special knowledge in matters relating to backward classes.

2. **Article 338B, Clause 3, Sub-clause 9 to be amended as;**

"The Union and every State Government shall consult the commission on all major policy matters affecting socially and educationally backward classes and NCBC should consult the State Government for any state specific issues".

Although it is observed that State Government should continue to have powers but simultaneously it affects the powers vested in NCBC but it is to be considered that every state has different issue with specific solution and to save federal structure of our country and to address genuine grievance NCBS should consider the state recommendations for state specific issues.

3. **Article 342A (2) may be modified as follows:—**

"President may, on the advise of the National Commission for Backward Classes include or exclude from the Central list of socially and educationally Backward Classes specified in a notification issued under clause (1)."

Committee on Welfare of OBC, presented its First Report to Parliament on 27.8.2012 also recommended the views in its resolution under Para 2.1 of Part II of the Report states as under:

"The Constitution amendment should also include existing powers of NCBC under prevailing NCBC Act *vis.*, powers to include in or exclude from list of OBCs and obligation on GOI to consult NCBC for list revision."

4. **Article 338B, Clause (5) shall modified as follows;**

It shall be the duty of the commission—

Sub-Clause: 5(c) to participate and advise on the planning process of socio-economic development.

Insert line afterdevelopment..... "Of the socially and educationally backward classes and to evaluate the progress of their development under the Union and any State."

The suggestion and modification in Annexure I given by me in the light of Hon'ble Supreme Court Judgement in Indra Sawhney Case (1992) which will facilitate the purpose of this Amendment Bill and I am thankful for the honour participation in this historic move regarding this bill for which we are fighting for long time.

With Regards

(B.K. Hariprasad)

SUGGESTIONS OF THE FOLLOWING MEMBERS OF THE PARLIAMENT RAJYA SABHA

ON

THE CONSTITUTION (ONE HUNDRED AND TWENTY THIRD AMENDMENT) BILL, 2017.

To

The Chairman
Select Committee of Rajya Sabha on the Constitution
(One Hundred and Twenty Third Amendment) Bill, 2017

The Bill was introduced for the first time in the Lok Sabha on 5.4.2017 and passed on 10.4.2017 (in 5 days). The same was placed before the Rajya Sabha immediately next day *i.e.*, 11.4.2017. Now Rajya Sabha has referred the Bill, 2017 to the select committee. It is obvious that there was no elaborate and exhaustive discourse on the subject matter of the Constitution (One Hundred and Twenty Third Amendment) Bill, 2017 in Lok Sabha.

We have gone through the Constitution (One Hundred and twenty third amendment) Bill, 2017. **At the out-set, we welcome the Bill, 2017 to the extent it proposes to grant Constitutional status to the National Commission for Backward Classes.**

However it is noted that it is not the first time that a constitutional commission has been envisaged under constitution as the commission prescribed under article 340 is the original constitutional commission the constitution makers had thought for the betterment of Backward Classes.

First of all, when a constitutional commission has been provided for the backward classes under article 340, it is difficult to understand as to why this constitutional amendment is sought to insert another article in 338 as 338B. Originally the article 338 envisages for a special officer for Scheduled Castes which has been converted into the two commissions for SC and ST by amending it. (65th and 89th amendment).

Ideally the NCBC constituted by NCBC act 1993 ought to have been adopted by recognising it under article 340 or else a article 340 a ought to have been inserted with the additional functions for the commission as in existence under article 338 or 338A (NCSC and NCST).

At the same time, coming straight to core issues, we quite see the deficiencies in the Bill named hereunder:

1. Sub-Article (2) of Article 338B spells out that the National Commission for Backward Classes shall consist of a Chairperson, Vice-Chairperson and three other Members. But their qualifications are not specified except stating that the conditions of the service and tenure of office of the Chairperson, Vice-Chairperson and other Members so appointed shall be such as the President may by rules determine.

Sub-article (3) states that the Chairperson, Vice-Chairperson and other Members of the Commission shall be appointed by the President by warrant under his hand and seal.

Whereas, the National Commission for Backward Classes Act, 1993 had made it explicitly clear about the qualification of the Chairperson and the Members. The reason for anxiety is that this body should consist of experts. Accordingly under the Act, 1993 it was specifically, under section 3(2), provided the qualifications as follows;

- (a) A Chairperson, who is or has been a judge of the Supreme Court or of a High Court;
- (b) A Social Scientist;

- (c) Two persons, who have been special knowledge in matters relating to Backward Classes; and
- (d) A Member-Secretary who is or who has been an officer of the Central Government in the rank of a Secretary to the Government of India.

This was in-conformity with the view of Supreme Court opinion in Indra Sawhney's case decided by Nine-Judge Constitution Bench.

2. Under the Bill, 2017 sub-article (5) of Article 338B deals with the duties of the Commission as shown hereunder:

"(5) It shall be the duty of the Commission—

- (a) To investigate and monitor all matters relating to the safeguards provided for the socially and educationally Backward Classes under this Constitution or under any other law for the time being in force or under any order of the Government and to evaluate the working of such safeguards;
- (b) To inquire into specific complaints with respect to the deprivation of rights and safeguards of the socially and educationally Backward Classes;
- (c) To advise on the socio-economic development of the socially and educationally backward classes and to evaluate the progress of their development under the Union and any State;
- (d) To present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards;
- (e) To make in such reports the recommendations as to the measures that should be taken by the Union or any State for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the socially and educationally Backward Classes; and
- (f) To discharge such other functions in relation to the protection, welfare and development and advancement of the socially and educationally backward classes as the President may, subject to the provisions of any law made by Parliament, by rule specify".

But what is surprisingly missing is, the essential function of the Commission as provided under section 9(1) and (2) of the 1993 Act. These functions were again as per the specifications in the aforesaid judgment of the Supreme Court (1992, para-847). Section 9 of the National Commission for Backward Classes Act, 1993 reads thus;

9. Functions of the Commission:

- (i) The Commission shall examine requests for inclusion of any class of citizens as a backward class in the list and hear complaint of over-inclusion or under-inclusion of any Backward Class in such list and tender such advice to the Central Government as it demands of appropriate;
- (ii) The advice of the Commission shall ordinarily be binding upon the Central Government.

This entire pivotal provision is taken away under the Constitution (One hundred and twenty third amendment) Bill, 2017. These functions are in-conformity with Article 340 of the Constitution as well. Minus these functions, other functions now provided under the Bill, 2017 are of more supervisory in nature. In the process, virtually, Article 340 which is like soul of Backward Classes would become ineffective, this cannot happen. Because the Article 340 perceived the role to 'wipe out every tear from every eye of the socially and educationally Backward Classes' by providing benefits under

Articles 15, 16 and 29 of the Constitution. **Article 340 not only envisages the appointment of a separate Commission to investigate the social and educational conditions of those classes and to make recommendations for the removal of the difficulties faced by them, but also the term 'Backward Classes' must be understood in the context of what is laid down in Article 340 (1).** That is the intent of the Article. The said Article also provides for defining the procedure to investigate the conditions of socially and educationally Backward Classes. It appears this was the exact reason for initially proposing the name of the Commission as 'National Commission for Socially and Educationally Backward Classes'.

3. Furthermore, the provision regarding periodic revision of the backward class list once in ten years and mandatory consultation with the National Commission for Backward Classes by Central Government as provided under section 11 of the National Commission for Backward Classes Act, 1993 is again totally omitted. This provision also incorporated in the National Commission for Backward Classes Act, 1993 as per the directions of the Supreme Court in Indira Sawhney's case. The idea behind the periodic revision is to make way for the deserving socially and educationally Backward Classes to get the special benefits like reservation, etc.,

As far as the amendment to article 342 is concerned, the idea is again misplaced as originally articles 341 and 342 confers power and prescribe the procedure to include or exclude any caste in the SC list or ST list/however there was no such OBC list at the time of framing constitution, the need was felt only after the implementation of Mandal Commission recommendations and in Indira Sahni judgement the hon'ble Supreme Court envisages an expert body to carry out this job.

It is important to note that identification of SC's (as they mostly were treated as untouchables) and ST's (mostly lived in forest areas) was relatively an easy task whereas identification of castes under OBC's list requires more scientific knowledge, social studies and judicial approach.

For fulfilling the aforesaid requirement the NCBC act 1993 has been enacted. Now giving the functions of present NCBC to Governor or President is actually a step backward.

Hence amending article 342 and equating identification of OBC list like SC and ST list should not be done.

4. There are amendments to Articles 342 and 366 also as extracted here below:

"342A. (1) The President may with respect to any State or Union territory, and where it is a State, after consultation with the Governor thereof, by public notification, specify the socially and educationally Backward Classes which shall for the purposes of this Constitution be deemed to be socially and educationally Backward Classes in relation to that State or Union territory, as the case may be.

(2) Parliament may by law include in or exclude from the Central List of Socially and educationally backward classes specified in a notification issued under clause (1) any socially and educationally backward class, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification".

26(C)—"socially and educationally backward classes" means such backward classes as are so deemed under article 342A for the purposes of this Constitution".

There is an apprehension as to whether combined reading of amended Articles 342A and 366(26C) under the Constitution 123rd Amendment Bill, 2017 would lead to taking away the rights of the Backward Classes in the State for determination of Backward Classes for State List? Whether that power vested with the State to notify on the recommendation of the State Commission is being taken away? This cannot happen

for any reasons as long as federal system that we are having. This shadow has to be cleared to banish the doubts at least by Select Committee which can, if I may say so, revise the Draft Rules.

5. Lastly, in addition to granting constitutional status to the National Commission for Backward Classes under the Constitution (One hundred and twenty third amendment) Bill, 2017 and the duties entrusted, the above mentioned inadequacy are to be made good so as to infuse confidence of the Backward Classes in the National Commission for Backward Classes proposed.

Mahatma Gandhi said: **'If means are vitiated the ends are bound to be vitiated'**.

Persistence of the Bill in the current form may not stand the test of judicial scrutiny. Therefore, the necessary amendments in consonance with the spirit of the Supreme Court Judgement in Indra Sawhney's case are absolutely needed.

This is for your kind consideration.

Sd/-

(Husain Dalwai)

Sd/-

(Kanimozhi)

Sd/-

(A. Navaneetha Krishnan)

Sd/-

(T.K. Rangarajan)

Sd/-

(B.K. Hariprasad)

Husain Dalwai

Member of Parliament (Rajya Sabha)
 Member — All India Congress Committee
 Member — Standing Committee on Urban Development
 Member — Committee on Government Assurance
 President — Maulana Azad Vichar Manch
 President — Rail Mazdoor Union (Central Zone)
 President — Taximan Union, Mumbai



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HD/DEL/155

3rd July, 2017

Hon'ble Shri Bhupendra Yadavji,

Sub: Suggested amendments to the Constitution (One Hundred and Twenty Third) Amendment Bill, 2017

I would like to submit some amendments to the Constitution (One Hundred and Twenty Third Amendment) Bill, 2017 which will strengthen the provisions of the Bill meant for the welfare of the Backward Classes.

I shall be grateful if the amendments form a part of the Select Committee report to be submitted to the government. Please find the amendments attached with this letter.

Thank you.

With regards,

Sd/-
 Husain Dalwai

To,

Sh. Bhupendra Yadav
 Hon'ble Chairperson,
 Select Committee on the Constitution (One Hundred and Twenty Third)
 Amendment Bill, 2017

Sd/-
 (B.K. Hariprasad)

SH. HUSAIN DALWAI

CONSTITUTION (ONE HUNDRED AND TWENTY THIRD) AMENDMENT BILL, 2017

3RD JULY, 2017

AMENDMENTS

CLAUSE	ARTICLE	AMENDMENT	REASON
1	2	3	4
Clause 3	Art. 338B (1)	On page 2, line 3, instead of the words 'National Commission for Backward Classes', the following words be inserted, namely: 'National Commission for Socially and Educationally Backward Classes'	<ul style="list-style-type: none"> ● It is proper that the Commission being established to look after the welfare of socially and educationally backward classes be called as such. ● It is also important to clarify that the criteria for identification would remain 'social and educational backwardness' and not 'social, educational or economic backwardness'. ● There were concerns raised that a 5 member Commission will not be able to adequately look after the welfare of OBCs who constitute a major chunk of the population of the country. It has been proposed that a 7 member Commission may instead be established.
Clause 3	Art. 338B (2)	On page 2, line 5, instead of the words 'Chairperson, Vice Chairperson and three other members', the following words shall be inserted, namely: 'Chairperson, Vice Chairperson and five other members, who are persons from socially and educationally backward classes, including a Member-Secretary who is or has been an officer of the Central Government at the rank of a Secretary to the Government of India'.	
Clause 3	Art. 338B (2)	On page 2, after line 7, the following proviso be added, namely: 'Provided that the Chairperson shall be a retired Judge of either the Supreme Court or of a High Court, the Vice-Chairperson shall be a person from a O.B.C. minority community, at least one member should be a woman, at least one member should be from a community categorized as Most Backward Class or Extremely Backward Class: Provided further that at least two members must be persons who have expert knowledge in matters relating to backward classes.'	<ul style="list-style-type: none"> ● It is important to retain the provisions of the existing Act which provide for composition of the Commission. These provisions were designed keeping in mind the fact that such a body needs to be an impartial, a political and expert body. ● Such provisions are substantive and must be included in the Act itself rather than be left to the Rules. ● The fact that such provision has not been made for the NCSC or NCST is no excuse for not making the same for NCSEBC.
Clause 3	Art. 338B (5)	On page 2, After line 11, two new sub-clauses (a) and (b) be added and the existing sub-clauses (a) to (f) be renumbered as (c) to (h). The new sub-clauses (a) and (b) be read as follows:	<ul style="list-style-type: none"> ● This provision is inserted to ensure that Commission plays an important role in creating the initial list and subsequently amending it and to tender such advice which shall ordinarily be binding on the government.

1	2	3	4
		<p>'(a) (i) To examine the draft list of socially and educationally backward classes to be submitted to President for public notification under Article 342A(1) and tender such advice to the Central Government as it deems appropriate.</p> <p>(ii) The advice tendered by the Commission shall ordinarily be binding on the Central Government:</p> <p>Provided that if the Central Government doesn't agree with the advice of the Commission, it shall record its reasons in writing and submit such reasons along with the draft list to the President.</p> <p>(b) (i) To examine and advise the Central Government on the requests of inclusion or exclusion from the list of socially and educationally backward classes for the purpose of enabling the Parliament to amend this list under Article 342A(2) and to hear complaints of over-inclusion and under-inclusion of any backward classes in such list and tender such advice to the Central Government as it deems appropriate.</p> <p>(ii) The advice tendered by the Commission shall ordinarily be binding on the Central Government.</p> <p>Provided that if the Central Government doesn't agree with the advice of the Commission, it shall record its reasons in writing and place the same before both Houses of Parliament.'</p> <p>On page 2, for lines 41 and 42, the following shall be substituted, namely:</p> <p>'(8) The Commission shall, while examining requests and complaints as referred to in sub-clauses (a) and (b) or investigating any matter referred to in sub-clause (c) or inquiring into any complaint referred to in sub-clause (d) of clause (5).'</p> <p>On page 3, after line 19, the following shall be inserted, namely:</p> <p>'Provided that such public notification shall be issued on the basis of advice tendered by the Commission under Article 338B (5)(a) and shall be placed in both Houses of Parliament as soon as possible after issuance.</p>	
Clause 3	Art. 338B (8)		<ul style="list-style-type: none"> • This is in keeping with the directions of the Supreme Court in the Indira Sawhney case. • While issuing the notification, the President, and while amending the list, the Parliament, must be aware of the advice of the Commission because the primary role of inclusion/exclusion etc. was entrusted by the Supreme Court to the Commission.
			<ul style="list-style-type: none"> • This provision is made to extend the powers of a civil court while examining requests for inclusion, looking into complaints of over or under inclusion and other provisions as provided for in the earlier Act also.
Clause 4	Art. 342A (1)		<ul style="list-style-type: none"> • This provision is made to ensure that President is bound by the advice of the National Commission and the Governor is bound by the advice of the State Commission.

1	2	3	4
Clause 4	Art. 342A (2)	<p>Provided further that the consultation with the Governor of a State shall be on the basis of advice tendered to the Governor by the State Commission of Backward Classes of that State'. On page 3, after line 23, the following lines shall be inserted, namely:</p> <p>'Provided that such a law is based on the advice tendered by the Commission under Article 338B (5)(b).'</p> <p>On page 3, after Article 342A (2), a new clause be added, namely:</p> <p>'342A (3)—The Central Government may at any time, and shall, at the expiration of ten years from the coming into force of the list notified under Article 342A (1), and every succeeding period of ten years thereafter, on advice of the Commission, undertake revision of the list with a view to exclude those classes who have ceased to be backward classes or for including in such list new backward classes.'</p>	<ul style="list-style-type: none"> ● This provision ensures that Parliament takes into consideration advice tendered by the Commission at the time of amending the list through a Bill. ● As directed by the Supreme Court and as provided in the earlier Act, a periodic revision of the list must be undertaken as per the advice tendered by the Commission.
Clause 4	Art. 342A (3)		

ANNEXURE I

ANNEXURE IV

COMMENTS RECEIVED FROM MINISTRY OF SOCIAL JUSTICE AND
EMPOWERMENT, DEPARTMENT OF SOCIAL JUSTICE & EMPOWERMENT

Comments on response received from Dr. T. Subharami Reddy, M.P., Rajya Sabha

Sl. No.	Name of States/UTs and their observations	Article	Comments of D/o SJE
1.	That at page 2, Line 3,— <i>for</i> “National Commission for Backward Classes” “National Constitutional Commission for Backward Classes” be <i>substituted</i> .	Article 3	This Commission is being constituted under Article 338B of the Constitution like the National Commission for Scheduled Castes (Article 338) and the National Commission for Scheduled Tribes (Article 338A). It is implied that the new Commission is a Constitutional body. Hence no amendment called for.
2.	That at page 3, line 5,— <i>for</i> the word “three”, the word “five” be <i>substituted</i> .	Clause 338B(2)	The composition of the existing National Commission for Backward Classes also comprises five members. Therefore, there is no need to enlarge the composition of the Commission. Hence no amendment called for.
3.	That at page 2, <i>after</i> line 9—the following be <i>inserted</i> : “Provide that at least one Member of the Commission shall be woman: Provided further that no post of a Member, including that of a Secretary and other principal officers of the commission, shall lie vacant for more than ninety days.”.	Clause 338B(2)	The inclusion of a woman member would be part of the Rules to be framed under the Act. There is no requirement of changing the modifying the Bill. Hence no amendment called for.
4.	That at page 3, line 13— <i>after</i> the words “backward classes”, the words “ and its opinion shall be given due consideration by the Union or the State Government, as the case may be.” be <i>inserted</i> .	Article 338B(9)	Article 338B(6) already provides for a report by the Commission to be laid in each House of Parliament alongwith action taken or proposed to be taken on the recommendation relating to the Union. Hence no amendment called for.
5.	That at page 3, line 16— <i>for</i> “after consultation with the Governor thereof”, the following be <i>substituted</i> : “only with the prior recommendation of the State Government and giving due regard to such recommendation”.	Article 342A(1)	Consultation with the Governor implies recommendations of the State Government. Hence no amendment called for.
6.	That at page 3, <i>after</i> the line 23—the following be <i>inserted</i> : “(3) Every State Government may, by public notification, specify the socially and educationally backward classes in that State which shall be deemed to be the State List of socially and educational backward classes in relation to that State. (4) The State may by law include in or exclude from the State List of socially and educationally backward classes specified in a notification issued under clause (3) any socially and educationally backward class, by save as aforesaid, a notification issued under the said clause shall not be varied by any subsequent notification.”	Article 342A(2)	The present Bill is confined to the Central Government and Central List that are to be notified by the Central Government. Hence no amendment called for.

Comments on response received from Dr. Dilip Kumar Tirkey, M.P. Rajya Sabha

Sl. No.	Name of States/UTs and their observations	Article	Comments of D/o SJE
1.	On page 3, in line 16, “after consultation with the Governor thereof” may be substituted with “only with prior recommendation of the State Government and giving due regard to such recommendation.”	Article 342A(1)	Consultation with the Government implies recommendations of the State Government. Hence no amendment called for.
2.	On page 3, in line 17 and 18, the phrase “for the purpose of this Constitution” may be omitted.	Article 342A(1)	The phrase “for the purpose of this Constitution” is a legislative requirement advice by the Legislative Department. Hence no amendment called for.
3.	On page 3, in line 18, after “deemed to be” the phrase “the central list” may be inserted.	Article 342A(1)	The public notification envisaged under this Article will be the Central List. Hence no amendment called for.
4.	On page 3, after line 23 following two paragraphs may be inserted: (3) “Every State Government may, by public notification, specify the socially and educationally backward classes in that State which shall be deemed to be the State List of socially and educationally backward classes in relation to that State. (4) The State may by law include in or exclude from the State List of socially and educationally backward classes specified in a notification issued under clause (3) any socially and educationally class, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.”	Article 342A(2)	The present Bill is confined to the Central Government and Central List that are to be notified by the Central Government. Hence no amendment called for.

Sl. No.	Observations of Hon. MPs	Article	Comments of D/o SJE
Sh. B.K. Hariprasad			
1.	Chairperson should be a former Judge for judicial approach; Members Secretary should be a former Secretary level officer of GOI, a social Scientist and two persons with special knowledge in matter relating to backward classes.	Article 338B(2)	This is only an advisory and cannot form part of the Bill. The composition of the Commission would be incorporated in the modalities to be framed on enactment.
2.	Article 338B, Clause 3, Sub-clause 9 to be amended as: “The Union and every State Government shall consult the Commission on all major policy matter affecting socially and educationally backward classes and NCBC should consult the State Government for any State specific issues.”	Article 338B Sub-clause (9)	One of the duties of the proposed Commission, as specified under Article 338B (5) (C), states that “to advise on the socio-economic development of the socially and educationally backward classes and to evaluate the progress of their development under the Union and any State.”
3.	Article 342A (2) may be modified as follows: “President may, on the advice of the National Commission for Backward Classes include or exclude from the Central List of socially educationally Backward Classes specified in a notification issued under clause (1).”	Article 342A (2)	The Bill that would be considered by the Parliament for inclusion or exclusion of communities from the Central List of socially and educationally backward classes would incorporate the views of the NCBC.
4.	Article 338B, Clause (5) shall be modified as follows: It shall be the duty of the Commission-Sub-clause: 5(c) to participate and advise on the planning process of socio-economic development. Insert line afterdevelopment..... “Off the socially and educationally backward classes and to evaluate the progress of their development under the Union and any State.”	Article 338B, Clause (5)	All the Sub-clauses under Article 338B (5) imply a participative role of the proposed Commission.
In view of the above, the amendments proposed by the Hon. MPs may not be allowed.			
Smt. Kanimozhi, S/Shri Husain Dalwai, Shri T.K. Rangarajan, Shri B.K. Hariprasad, A. Navaneetha Krishnan			
5.	First of all, when a constitutional commission has been provided for the backward classes under Article 340, it is difficult to understand as to why this Constitutional amendment is sought to insert another Article in 338 as 338B. Originally the Article 338 envisages for a special officer for Scheduled Classes which has been converted into the two Commissions for SC and ST by amending it. (65th and 89th Amendment)	Article 340	The present NCBC has not been set up under Article 340 but under the National Commission for Backward Classes Act of 1993. A new article 338B is being inserted to confer constitutional status to the NCBC since it is under article 338 and 338A that the National Commission for Scheduled Castes (NCSC) and National Commission for Scheduled Tribes (NCST) were given constitutional status.
6.	Ideally the NCBC constituted by NCBC Act, 1993 ought to have been adopted by recognising it under Article 340 or else a Article 340 a sought to have been inserted with the additional functions for the Commission as in existence under Article 338 or 338A (NCSC) and (NCST).	Article 340	The existing Commission for Backward Classes was not set up under Article 340 but was set up as a statutory body under NCBC Act, 1993 in pursuance of the Supreme Court's orders in the Indra Sawhney case. The Hon'ble Court had directed the Union of India and the States to set up permanent bodies for the purpose of socially and educationally backward classes. Thus, the existing NCBC could not have been recognized under Article 340.
7.	This entire pivotal provision is taken away under the Constitution (One hundred and twenty third Amendment) Bill, 2017. These functions are in conformity with Article 340 of the Constitution as well. Minus these functions, other functions now provided under the Bill, 2017 are of more supervisory in nature. In the process, virtually, Article 340 which is like soul of Backward Classes would become ineffective.	Article 340	The advice of the NCBC will be an integral part of any proposal for inclusion/exclusion from the Central List that would be proposed by the Government to the Parliament. This would ensure transparency in the process of inclusion/exclusion from the Central List as these would be debated and scrutinized by the Parliament.

S1. Observations of Hon. MPs No.	Article	Comments of D/o SJE
8. Article 340 not only envisages the appointment of a separate Commission to investigate the social and educational concerns of those classes and to make recommendations for the removal of the difficulties faced by them, but also the term 'backward classes' must be understood in the context of what is laid down in Article 340(1).	Article 340	The proposed Article 338B actually aids in the setting up of a Commission envisaged under Article 340, but on a permanent basis.
9. It is important to note that identification of SC's (as they mostly were treated as untouchables) and ST's (mostly lived in forest areas) was relatively an easy task whereas identification of castes under OBC's list requires more scientific knowledge, social studies and judicial approach. For fulfilling the aforesaid requirement, the NCBC Act, 1993 has been enacted. Now giving the functions of present NCBC to Governor or President is actually a step backward. Hence amending Article 342 and equating identification of OBC list like SC and ST list should not be done.	Article 342	The setting up of the proposal Commission will not be retrograde to the interest of the socially and educationally backward classes. The Article 342A will provide for a comprehensive examination of each case of inclusion/exclusion from the Central List. The ultimate power for such inclusion/exclusion would stand vested with the Parliament.
10. There is an apprehension as to whether combined reading to amended Article 342A and 366(26C) under the Constitution 123rd Amendment Bill, 2017 would lead to taking away the rights of the Backward Classes in the State for determination of Backward Classes for State List? Whether that power vested with the State to notify on the recommendation of the State Commission is being taken away? This cannot happen for any reasons as long as federal system that we are having. This shadow has to be cleared to banish the doubts at least by Select Committee which can, if I may say so, revise the Draft Rules.	Article 342A and 366(26C)	This is a misplaced apprehension as the proposal Bill will not in any way take away the powers of the State to exclude/include communities etc. in the State's list.
In view of the above, the amendments proposed by the Hon. MPs may not be allowed.		
Smt. Kanimozhi		
11. Therefore, any new Constitutional Body being created now must not displace the States from their traditional and integral role in the empowerment of backward classes.		The proposed Bill will not in any way take away the powers of the State to exclude/include communities etc. in the State's list.
12. Modify: Sub-clause (c) to participate and advise on the planning process of socioeconomic development of socially and educationally backward classes and evaluate the progress under the Union and any State.	Article 338B, Clause 5	All the Sub-clauses under Article 338B (5) imply a participative role of the proposed Commission.
13. Insert: (g) to examine request for inclusion of any class in the lists and hear complaints of over inclusion or under-inclusion of any backward class in such lists and tender such advice to the Central Government as it deems appropriate.	Article 338B, Clause 5	Hearing of complaints by the proposed Commission is provided under Article 338B (5). As regards examination of requests for inclusion of any class as a backward class, the same would be available to the NCBC as part of the modalities to be issued on enactment.
14. Insert: Clause 10. Notwithstanding anything provided in Clause 9, the State Government shall continue to have the powers to identify Socially and Educationally Backward Classes.	Article 338B, Clause 10	The proposed Bill will not in any way take away the powers of the State to include communities etc. in the State's list.
15. Modify the clause to replace "after consultation with Governor" with on the requests made by the Governor.	Article 342A(1)	The consultation with Governor takes care of not only requests emanating from the States but also such requests that may be received by the Central Government.

Sl. No.	Observations of Hon. MPs	Article	Comments of D/o SJE
16.	Insert: The President may, on the advise of the National Commission for Backward Classes, include or exclude from the Central List of socially and educationally backward classes specified in a notification issued under Clause (1).	Article 342A Clause 2	The setting up of the proposed Commission will not be retrograde to the interest of the socially and educationally backward classes. The Article 342A will provide for a comprehensive examination of each case of inclusion/exclusion from the Central List. The ultimate power for such inclusion/exclusion would stand vested with the Parliament.
17.	Insert: The Governor of a State, by public notification, specify the socially and educationally backward classes for the purposes of making provision for reservation of posts under that State or under any other authority of the State or under the control of the State or seats in the educational institutions within that State.	Article 342A Clause 3	The proposed Bill concerns only the Central List of socially and educationally backward classes to be issued by the Central Government.
18.	Insert: The Government may, on the advise of the State Commission for Backward Classes, include or exclude from the State List of socially and educationally backward classes specified in a notification issued under Clause (3).	Article 342A Clause 4	The proposed Bill concerns only the Central List of socially and educationally backward classes to be issued by the Central Government.
In view of the above, the amendments proposed by the Hon. MPs may not be allowed.			
Shri Husain Dalwai, MP			
19.	On page 2, line 3, instead of the words 'National Commission for Backward Classes', the following words be inserted, namely: 'National Commission for Socially and Educationally Backward Classes'	Article 338B(1) Clause 3	The clause provides that there shall be a Commission for the socially and educationally backward classes to be known as the National Commission for Backward Classes. This nomenclature has been intentionally applied so as to maintain a continuum with the existing National Commission for Backward Classes.
20.	On Page 2, line 5 instead of the words 'Chairperson, Vice Chairperson and three other members', the following words shall be inserted, namely: 'Chairperson, Vice Chairperson and five other members, who are persons from socially and educationally backward classes, including a Member-Secretary who is or has been an officer of the Central Government at the rank of a Secretary to the Government of India.'	Article 338B(2) Clause 3	The existing National Commission for Backward Classes has five members. The same strength has been proposed in the Bill.
21.	On page 2, after line 7, the following proviso be added, namely: 'Provided that the Chairperson shall be a retired Judge of either the Supreme Court or of a High Court, the Vice-Chairperson shall be a person from a minority community, at least one member should be a woman, at least one member should be from a community categorized as Most Backward Class or Extremely Backward Class: Provided further that at least two members must be persons who have expert knowledge in matters relating to backward classes.'	Article 338B(2) Clause 3	These aspects will be considered at the time of framing the Rules, on enactment of the Bill.
22.	On page 2, After line 11, two new sub-clauses (a) and (b) be added and the existing sub-clauses (a) to (f) be renumbered as (c) to (h). The new sub-clauses (a) and (b) be read as follows: '(a)(i) To examine the draft list of socially and educationally backward classes to be submitted to President for public notification under Article 342A(1) and tender such advice to the Central Government as it deems appropriate.	Article 338B (5) Clause 3	These aspects will be given due consideration at the time of framing of modalities and standard operating procedures for inclusion/exclusion of castes/communities with reference to the Central list.

Sl. No.	Observations of Hon. MPs	Article	Comments of D/o SJE
	<p>(ii) The advice tendered by the Commission shall ordinarily be binding on the Central Government:</p> <p>Provided that if the Central Government doesn't agree with the advice of the Commission, it shall record its reasons in writing and submit such reasons along with the draft list to the President.</p> <p>(b) (i) To examine and advice the Central Government on the requests of inclusion or exclusion from the list of socially and educationally backward classes for the purpose of enabling the Parliament to amend this list under Article 342(2) and to hear complaints of over-inclusion and under-inclusion of any backward classes in such list and tender such advice to the Central Government as it deems appropriate.</p> <p>(ii) The advice tendered by the Commission shall ordinarily be binding on the Central Government:</p> <p>Provided that if the Central Government doesn't agree with the advice of the Commission, it shall record its reasons in writing and place the same before both Houses of Parliament'.</p>		
23.	<p>On page 2, for lines 41 and 42, the following shall be substituted, namely:</p> <p>'(8) The Commission shall, while examining requests and complaints as referred to in sub-clauses (a) and (b) or investigating any matter referred to in sub-clause (c) or inquiring into any complaint referred to in sub-clauses (d) of clause (5).</p>	Article 338B (8) Clause 3	The powers of the Civil Court provided under the Bill covers the suggestion made.
24.	<p>On page , for line 19 the following shall be inserted, namely:</p> <p>'Provided that such public notification shall be issued on the basis of advise tendered by the Commission under Article 338B (5)(a) and shall be placed in both Houses of Parliament as soon as possible after issuance.</p> <p>Provided further that the consultation with the Governor of a State shall be on the basis of advice tendered to the Governor by the State Commission of Backward Classes of the State.'</p>	Article 342A (1) Clause 4	The provisions of the instant Bill is limited to the Central lists.
25.	<p>On page 3, after line 23, the following lines shall be inserted, namely:</p> <p>'Provided that such a law is based on the advice tendered by the Commission under Article 338B(5)(b).</p>	Article 342A(2) Clause 4	As already stated above the modalities to be framed indicating the chain of process of cases of inclusion/exclusion with reference to the Central list, will incorporate the aspect suggested.
26.	<p>On page, 3, after Article 342A(2), a new clause be added, namely:</p> <p>'342A(3) — The Central Government may at any time, and shall, at the expiration of ten years from the coming into force of the list notified under Article 342A(1), and every succeeding period of ten years thereafter, on advice of the Commission, under take revision of the list with a view to exclude those classes who have ceased to be backward classes or for including in such list new backward classes.'</p>	Article 342A(3) Clause 4	The inclusion/exclusion of castes/communities with reference to the Central lists is a continuous process.
<p>In view of the above mentioned position, the amendments proposed by the Hon'ble MPs may not be allowed.</p>			

MINUTES OF THE MEETING OF THE SELECT COMMITTEE OF THE
RAJYA SABHA ON THE CONSTITUTION (ONE HUNDRED AND
TWENTY-THIRD AMENDMENT) BILL, 2017

I

FIRST MEETING

The Committee met at 11.00 A.M. on Monday the 17th April, 2017 in Room No. 62, Parliament House, New Delhi.

PRESENT

1. Shri Bhupender Yadav — *Chairman*

MEMBERS

2. Dr. Vikas Mahatme
3. Shri Ram Narain Dudi
4. Shri B.K. Hariprasad
5. Shri Sukhendu Sekar Roy
6. Shri A. Navaneethakrishnan
7. Shri T.K. Rangarajan
8. Mir Mohammad Fayaz
9. Shri Swapan Dasgupta

SECRETARIAT

1. Shri J.G. Negi, *Joint Secretary*
2. Shri R.S. Rawat, *Additional Director*
3. Smt. Monica Baa, *Deputy Secretary*

**Representatives of the Ministry of Social Justice and Empowerment
(Department of Social Justice)**

1. Smt. G. Latha Krishna Rao, Secretary
2. Shri B.L. Meena, Joint Secretary
3. Shri Prakash Tarsorakar, Director
4. Shri K. Narayanan, MD, National Backward Classes Finance and Development Corporation.

Representatives of the Ministry of Law and Justice (Department of Legal Affairs)

1. Shri Suresh Chandra, Secretary
2. Shri Ramayan Yadav, Additional Secretary

Representatives of the Ministry of Law and Justice (Legislative Department)

1. Dr. Reeta Vasishta, Additional Secretary
2. Shri R. Sreenivas, Additional Legislative Counsel

2. At the outset, the Chairman welcomed the Members of the Committee and informed them about the reference of the Constitution (One Hundred and Twenty-Third Amendment) Bill, 2017, as passed by the Lok Sabha, to the Select Committee for consideration and report by the last day of the first week of the next session. He sought

the views of the Members of the Committee on the course of action to be followed in examining the Bill and invited the Members to suggest names of experts/organizations who can be called before the Committee to share their views.

3. The Members of the Committee expressed their views on the provisions of the Bill and were of the opinion that the views of States, especially the Tamil Nadu, Kerala, Karnataka and Andhra Pradesh should be taken on the provision of the Bill. The Committee was also of the view that opinions of different organizations, including that of trade unions and Bar Associations, should be taken into consideration.

4. Thereafter, Secretary, Ministry of Social Justice and Empowerment gave a power point presentation to the Committee wherein she dwelled at length on the background in which the Bill under consideration was drafted and the history of the reservation to the backward classes. The Committee then sought clarifications on the following issues *i.e.* (i) whether there was any objective criterion laid down by the Supreme Court for deciding the basis of 'inclusion' and 'exclusion' of any notified class; (ii) what would be the status of the State Backward Classes Commissions after coming into force of the Bill under consideration; (iii) what would be the status of the existing list of OBCs after coming into effect of the Bill under consideration; (iv) what would be the role of the Governor in deciding about the inclusion or exclusion of classes in the OBC list.

5. Secretary, Department of Legal Affairs, Ministry of Law and Justice informed that the eleven indicators provided by the Mandal Commission would provide the broad framework for deciding the classes to be included in the list of OBCs by the National Commission for Backward Classes. The Committee was informed that the proposed amendment was only to confer constitutional status on the National Commission for Backward Classes while the State Backward Classes Commissions will continue to function as they are. It was further informed that two Bills have been moved in the Parliament one is the Constitution (One Hundred and Twenty-Third Amendment) Bill, 2017 and the other one is the Repeal and Saving Clause Bill which would save whatever actions have been taken so far by the National Backward Classes Commission.

6. Secretary, Ministry of Social Justice and Empowerment further clarified that under the Backward Classes, unlike the SCs & STs, there are two lists *i.e.* the Central List and the State List. The Central List provides for education and employment opportunities in Central Government Institutions. In the State List, the States are free to include, whoever they wish to, in their Backward Classes List. As a result, if there is a certain category which is not in the Central List, it may still be found in the State List. That is the freedom and prerogative of the State Backward Classes Commission and that would continue to be there.

7. Concluding the meeting the Chairman directed that a Press Release should be issued in all the leading national and vernacular newspapers inviting comments/memoranda on the provisions of the Bill under consideration of the Select Committee within one month of the publication of the Press Release. He further directed that all the States be requested to submit their comments/views on the Bill for the consideration of the Committee. He again invited the Members to submit the names of the experts/organizations that may be called before the Committee for oral evidence.

8. A verbatim record of the proceedings of meeting was kept.

9. The Committee adjourned at 12.31 p.m.

NEW DELHI;
17th April, 2017

R.S. RAWAT
ADDITIONAL DIRECTOR

MINUTES OF THE MEETING OF THE SELECT COMMITTEE ON THE
CONSTITUTION (ONE HUNDRED AND TWENTY THIRD
AMENDMENT) BILL, 2017

II

SECOND MEETING

The second meeting of the Select Committee on the Constitution (One Hundred and Twenty Third Amendment) Bill, 2017 was held at 11.00 am on Monday, the 24th April, 2017 in Committee Room 'D', Parliament House Annexe, New Delhi.

PRESENT

1. Shri Bhupendar Yadav — *Chairman*

MEMBERS

2. Shri Chunibhai Kanjibhai Gohel
3. Dr. Vikas Mahatme
4. Shri Ram Narain Dudi
5. Shri B.K. Hariprasad
6. Shri Madhusudan Mistry
7. Shri Digvijaya Singh
8. Shri Husain Dalwai
9. Shri Sukhendu Sekhar Roy
10. Shri A. Navaneethakrishnan
11. Shrimati Kanimozhi
12. Shri Anil Desai
13. Shri Biswajit Daimary
14. Shri Rajeev Chandrasekhar
15. Shri Swapan Dasgupta

SECRETARIAT

1. Shri Mahesh Tiwari, *Director*
2. Shri R.S. Rawat, *Additional Director*
3. Shri Rakesh Anand, *Additional Director*
4. Smt. Monica Baa, *Deputy Secretary*
5. Ms. Chhaya Gupta, *Under Secretary*

Representatives of Ministry of Law & Justice

1. Dr. G. Narayana Raju, Secretary (Legislative Department)
2. Shri Suresh Chandra, Secretary (Legal Affairs)
3. Dr. Reeta Vasistha, Additional Secretary
4. Shri Ramayan Yadav, Additional Secretary
5. Shri R. Sreenivas, Additional Legislative Counsel

**Representatives of Ministry of Social Justice and Empowerment
(Department of Social Justice and Empowerment)**

1. Shri B.L. Meena, Joint Secretary
2. Shri K. Narayan, MD, National Backward Classes Finance and Development Corporation (NBCFDC)

2. At the outset, the Chairman welcomed the Members of the Committee and informed them that as per the decision of the Committee, a Press Release has been issued on the 22nd April, 2017 inviting memoranda on the Bill within 30 days of the publication of advertisement in the newspapers. He also informed that as decided by the Committee in its last meeting, the MD, NBCFDC will make a brief presentation to the Committee and thereafter, Secretary, Legal Affairs may also brief the Committee about the major judgements starting from Indira Sawhney to other major judgments on the issue related to reservation.

3. The Committee first heard NBCFDC which made a powerpoint presentation and thereafter, the Members sought clarifications on the points made therein. A query was raised as to whether a person, who has taken a loan under MUDRA, can also apply for a loan under the Scheme of NBCFDC. A clarification was also sought as to why there is a special loan scheme for women, limited to just one lakh rupees, when everyone is eligible to take loans up to five lakh rupees under NBCFDC Scheme. While complimenting NBCFDC for imparting skill to the OBCs, Members stated that there was no monitoring or tracking of the people who have acquired the skills. Members suggested that NBCFDC should maintain a database of each beneficiary under the skill development scheme so as to know how he has been benefited, whether he is still continuing and if he has been able to take advantage of that skill.

4. MD, NBCFDC replied that if the people who have applied under the MUDRA Scheme belong to the target group of NBCFDC, the banks can re-finance through the NBCFDC Scheme as the interest rate is much less in NBCFDC Scheme, that is between five and six per cent, whereas in MUDRA Scheme, it is around 10 per cent. The channel partners, which is the banks, are given money under two schemes—one is the project finance, wherein NBCFDC give them the funds and they can give it to fresh loanees; the other is under re-finance wherein they can submit the list of the loanees who have already taken loans at higher interest rates and that gets converted into a loan with a lower interest rate. The linkages with banks happened just over the last one year and NBCFDC has been requesting the banks to check their list of people who have taken a MUDRA loan and if they are from the OBC and belong to the target group, they can get it at a lower rate of interest. Regarding the question on loans for women, he stated that women are eligible for other loans but these loans are at a lower interest rate. He stated that they would definitely consider and see how they can increase their coverage for women and also extend loans of higher amounts for women. They had introduced a job portal to have a database which would be available with the Corporation. It has records of the mobile number of the person and the name and phone number of the existing employer. They are planning linkage of the website information with popular job portals.

5. Members pointed out that the basic idea of the NBCFDC is to help the backward classes and that majority of the backward classes are below poverty line. In view of this, Members questioned the very concept of 'double the poverty line'. MD, NBCFDC clarified that the term 'double the poverty line' was defined by the erstwhile Planning Commission. They have fixed Rs. 49,000 as the poverty line for the rural areas and Rs. 60,000 for the urban areas. Members also pointed that the rate of interest on educational loans at four per cent is on the higher side and too much for the students coming from backward classes. MD, NBCFDC stated that there is one additional policy of the Ministry of Human Resource Development wherein all the interest that is accruable on the educational loans gets paid for by the Ministry of HRD. So, NBCFDC have publicized the Scheme with their State Channel Agencies and many State Channel Agencies have also started claiming this amount. The amount received from the Ministry of HRD is given to the State Agencies who, in turn, put it into the account of the concerned student.

6. He further stated that there is a lot of scope in agriculture as most of the

agriculturists come under the backward classes. They had signed up, last year, with the Agriculture Sector Skill Council but unfortunately, they could not do much. Now they are looking at other possibilities of food processing and other such areas where they can provide training because one major issue with the farmers is that they are not able to process their produce and they get lesser value. On marketing and the artisans, he stated that they have signed an MoU with the Development Commissioner of Handicrafts where they are the implementing agency. That is basically for the purpose of identifying designs which can be upgraded. The payment will be done by DC, Handicrafts. They will work with such clusters. They have tried the e-marketing concept but that is not very popular among poor artisans because if the product is not liked by the consumer, they have to suffer the burden of the unsold goods. That is why they are concentrating more on the camp approach. He also stated that there are various States which have their own separate Corporations for looking after the Most Backward Classes. They are taking on board any State Corporation which is working for any marginalized community from amongst the OBCs and are also providing funds. He stated that the amount of funds that they provide every year is only around Rs. crores. And, using that, they are disbursing around Rs. 350 crores. Even considering an average loan of Rs. 20,000, they are not able to reach more than 1.7 or 1.8 lakh people every year. They have reached 23 lakh people which is not really a very large number, considering the size of the country. He further explained that the mandate of NBCFDC is the socio-economic development of backward classes through both finance and skill development. But the extent to which they can do depends on the funds available with them. They do evaluation studies and found that the people whom they have assisted, have definitely gone above the poverty line or double the poverty line. But, in order to reach more and more people, as part of their latest initiative, they are tying up with the DC (Handloom) and the DC (Handicraft). It can, probably, help because there the funding happens through these offices, which have definitely got large amount of funds.

7. The Members also enquired about giving stability to various nomads who come under the OBC category through financial support. They wanted to know whether NBCFDC has any scheme for them. The Committee was informed that some nomad come in SC category whereas some come in backward classes also. Some nomads even do not come in both the categories. However, it is difficult to finance all the category of OBCs, but they are concentrating on their skill development.

8. The Committee then heard the Ministry of Law & Justice. Chairman pointed out to the Law Secretary that the note from the Ministry does not clearly state which case is related to promotion and which is related to OBC reservation. He also pointed out that the Ministry's note mentioned that the Supreme Court suggested formation of a Commission but why this Commission is necessary and what is the purpose of the Constitutional Commission has also not been mentioned in the note. Nothing is also mentioned about the constitutional amendment relating to article 338B, whether it was challenged or not challenged, what the position was, etc. Chairman expressed that the Committee wanted serious work to be done as far as the legal aspect is concerned and, therefore, requested the Ministry to revise the note and to come prepared with a complete and exhaustive presentation in the next meeting.

9. A verbatim record of the proceedings of the Committee was kept.

The meeting adjourned at 12.33 p.m.

NEW DELHI;
24.04.2017

MAHESH TIWARI
DIRECTOR

MINUTES OF THE MEETING OF THE
SELECT COMMITTEE OF THE RAJYA SABHA ON THE
CONSTITUTION (ONE HUNDRED AND TWENTY-THIRD AMENDMENT)
BILL, 2017

III

THIRD MEETING

The Committee met at 11.00 A.M. on Monday the 02nd May, 2017 in Main Committee Room, Parliament House Annexe, New Delhi.

PRESENT

1. Shri Bhupender Yadav — *Chairman*

MEMBERS

2. Shri Chunibhai Kanjibhai Gohel
3. Shri Madhusudan Mistry
4. Shri Digvijaya Singh
5. Shri Sharad Yadav
6. Shri A. Navaneethakrishnan
7. Shri T.K. Rangarajan
8. Shri C.M. Ramesh
9. Shri Naresh Gujaral
10. Shri Biswajit Daimary
11. Shri Rajeev Chandrasekhar
12. Shri Swapan Dasgupta
13. Shri Ram Kumar Kashyap

SECRETARIAT

1. Shri J.G. Negi, *Joint Secretary*
2. Shri Mahesh Tiwari, *Director*
3. Shri R.S. Rawat, *Additional Director*
4. Shri Rakesh Anand, *Additional Director*
5. Smt. Monica Baa, *Deputy Secretary*
6. Ms. Chhaya Gupta, *Under Secretary*

**Representatives of the Ministry of Social Justice and Empowerment
(Department of Social Justice)**

1. Shri N.S. Kang, Secretary
2. Shri B.L. Meena, Joint Secretary
3. Shri K. Narayan, MD, National Backward Classes Finance and Development Corporation

Representatives of the Ministry of Law and Justice (Department of Legal Affairs)

1. Shri Suresh Chandra, Secretary
2. Shri Ramayan Yadav, Additional Secretary
3. Shri R.S. Verma, Deputy Legal Advisor

Representatives of the Ministry of Law and Justice (Legislative Department)

1. Dr. G. Narayana Raju, Secretary
2. Dr. Reeta Vasishta, Additional Secretary
3. Shri R. Sreenivas, Additional Legislative Counsel

2. At the outset, the Chairman welcomed the Members of the Committee and informed them that the Secretary, Department of Legal Affairs, Ministry of Law and Justice would brief the Committee on the major judgments starting from the *Indira Sawhney vs Union of India* till date related to the issue of reservations and affirmative action. He also requested the Ministry of Social Justice and Empowerment to expedite the process of finalizing the names of the non-governmental experts whom the Committee could call before it to share their views on the Constitution (One Hundred and Twenty-Third Amendment) Bill, 2017.

3. Department of Legal Affairs, Ministry of Law and Justice on the issue of constitution on National Commission of Backward Classes in 1993 informed the Committee that the Supreme Court in its judgment in *Indra Sawhney* case had directed that there ought to be a permanent body, in the nature of a Commission or Tribunal, to which complaints of wrong inclusion or non-inclusion of groups, classes and sections in the list of Other Backward Classes can be prepared. Such body must also be empowered to examine complaints of the said nature and pass appropriate orders. The Supreme Court also stated that the advice/opinion of Commission should ordinarily be binding upon the Government. Where, however, the Government does not agree with its recommendation, it must record its reasons therefor. Even if any new class/group is proposed to be included among the Other Backward Classes, such matter must also be referred to the said body in the first instance and action must be taken on the basis of its recommendations.

4. The Committee was further informed that Supreme Court was of the view that the body must be composed of experts in the field, both official and non-official, and must be vested with the necessary powers to make a proper and effective inquiry. It is equally desirable that each State constitutes such a body, a step which would go a long way in redressing genuine grievances. Such a body can be created under Clause (4) of Article 16 itself-or under Article 16(4) read with Article 340- as a concomitant of the power to identify and specify backward class of citizens, in whose favour reservations are to be provided. Such a body be constituted both at Central level and at the level of the States within four months. They should become immediately operational and be in a position to entertain and examine forthwith complaints and matters of the nature aforementioned, if any, received. It should be open to the Government of India and the respective State Governments to devise the procedure to be followed by such body. The body or bodies so created can also be consulted in the matter of periodic revision of lists of OBCs. Accordingly, the National Commission for Backward Classes was constituted and the job was assigned to that Commission and the National Commission for Backward Classes Act, 1993 was framed.

5. Secretary, Legislative Department, Ministry of Law and Justice on the specific query regarding constitution of NCBC as a statutory body in 1993 rather than a Constitutional body informed that in the Statement of Objects and Reasons attached to the National Commission for Backward Classes Act, 1993 they have mentioned that the Supreme Court, in the *Indra Sawhney* case, directed the Government to constitute a permanent body within a period of four months. At that time Parliament was not in Session, and that is why they constituted this Commission by way of an Ordinance. Thereafter, this Ordinance was replaced. So, they constituted a statutory body in order to comply with the direction of the Supreme Court, and not a constitutional body.

6. The Committee thereafter sought clarifications on the following issues *i.e.* (i) points that cropped up relating to reservation of OBC citizens in the Indra Sawhney Judgment particularly with reference to the fixing of the ratio of reservation and also explain the reasons for deciding the same by the Hon'ble Court in the said judgment; (ii) to what extent do the different Judicial pronouncement have a material bearing on the Bill under consideration and what amendments are required to be included in the Bill to give overriding effect to any of the Judgements which is coming in the ways of reservation policy to OBC; (iii) would the National Commission for Backward Classes to be constituted *vide* this bill have powers to summon, investigate, enquire and so on? What other provisions can be made in the bill to make its implementation and functioning more effective at the local and State level; (iv) how certain communities have been categorised as OBC in one state like for example in Tamil Nadu and at the same time these communities are classified as forward community in Andhra Pradesh; (v) to what extent the rights of the states would be affected after coming into effect of the bill under consideration of the Select Committee; (vi) Whether there are any Judicial pronouncement which prevents the National Commission for Backward Classes existing today from being elevated into a Constitutional Body? If so, provide details thereof; (vii) Whether there was my method by which the benefits of 27 percent reservation to other backward classes can be made available in those states where this has been denied so far; and (viii) There are different parameters adopted for defining creamy layer in the other backward classes in different states. In this respect, can any provision for amendment be made in this Bill to ensure that OBCs are not denied the benefits of reservation in those states where there is a majority of SCs or STs?

7. Concluding the meeting the Chairman directed the Ministry of Social Justice and Empowerment to inform the Committee in its next meeting the reasons for including the term 'socially and educationally backward class' under Article 340 of the Constitution. He also directed the Ministry to provide the Committee with a copy of the debates of the Parliament that took place on the First Amendment to the Constitution and Nehruji's speech on the issue as this amendment was moved in the backdrop of the State of Madras *vs* Champakam Dorairajan judgment on the issue of communal reservations. He also directed the Ministries to submit their comments/clarifications raised by the Members before the next meeting of the Committee.

8. A verbatim record of the proceedings of meeting was kept.

9. The Committee adjourned at 11.51 a.m.

NEW DELHI;
02nd May, 2017

MAHESH TIWARI
DIRECTOR

MINUTES OF THE MEETING OF THE SELECT COMMITTEE ON THE
CONSTITUTION (ONE HUNDRED AND TWENTY THIRD
AMENDMENT) BILL, 2017

IV
FOURTH MEETING

The fourth meeting of the Select Committee on the Constitution (One Hundred and Twenty Third Amendment) Bill, 2017 was held at 11.00 am on Monday, the 15th May, 2017 in Committee Room 'C', Parliament House Annexe, New Delhi.

PRESENT

1. Shri Bhupender Yadav — *Chairman*

MEMBERS

2. Dr. Vikas Mahatme
3. Shri Ram Narain Dudi
4. Shri B.K. Hariprasad
5. Shri Madhusudan Mistry
6. Shri Husain Dalwai
7. Prof. Ram Gopal Yadav
8. Shri Sharad Yadav
9. Shri Sukhendu Sekhar Roy
10. Shri A. Navaneethakrishnan
11. Shrimati Kanimozhi
12. Shri Anil Desai
13. Shri Biswajit Daimary
14. Shri Swapan Dasgupta
15. Shri Ram Kumar Kashyap

SECRETARIAT

1. Shri J.G. Negi, *Joint Secretary*
2. Shri Mahesh Tiwari, *Director*
3. Shri R.S. Rawat, *Additional Director*
4. Shri Rakesh Anand, *Additional Director*
5. Ms. Chhaya Gupta, *Under Secretary*

Representatives of the Ministry of Law & Justice

1. Dr. G. Narayana Raju, Secretary (Legislative Department)
2. Shri Suresh Chandra, Secretary (Legal Affairs)
3. Dr. Reeta Vasishta, Additional Secretary
4. Shri Ramayan Yadav, Additional Secretary
5. Shri K. Biswal, Joint Secretary & Legislative Counsel
6. Shri Diwakar Singh, Additional Legislative Counsel
7. Shri R. Sreenivas, Additional Legislative Counsel

**Representatives of the Ministry of Social Justice and Empowerment
(Department of Social Justice and Empowerment)**

1. Smt. G. Latha Krishna Rao, Secretary
2. Shri B.L. Meena, Joint Secretary
3. Shri K. Narayan, MD, National Backward Classes Finance and Development Corporation (NBCFDC)

Experts/Witnesses

1. Dr. K. Veeramani, President, Dravidar Kazhagam
2. Justice (Retd.) V. Eswaraiyah, Former Chairman, National Commission for Backward Classes (NCBC)
3. Shri S.K. Kharventhan, Ex-M.P. (Lok Sabha) & Former Member, NCBC
4. Shri G. Karunanidhy, General Secretary, All India Federation of OBC Employees' Welfare Association.

2. At the outset, the Chairman welcomed the Members of the Committee and informed them that the Committee had called some experts on the subject to brief the Committee. The Committee then heard Dr. K. Veeramani, President, Dravidar Kazhagam; Justice (Retd.) V. Eswaraiyah, Former Chairman, NCBC; Shri S.K. Kharventhan, Ex-M.P. (Lok Sabha) & Former Member, NCBC; and Shri G. Karunanidhy, General Secretary, All India Federation of OBC Employees' Welfare Association. The Chairman requested the experts to share their views on the various provisions of the Bill and related aspects, based on their practical experiences of having worked in the OBC Commission and among the OBCs. He also requested Secretary, Ministry of Social Justice & Empowerment; Secretary, Legal Affairs and Secretary, Legislative Department to provide clarifications on any points raised during the deliberations of the Committee.

3. The Committee first heard Dr. K. Veeramani who in his deposition before the Committee, stated that the same kind of constitutional powers should be given to the National Commission for Backward Classes as given to the Scheduled Castes Commission and the Scheduled Tribes Commission under the relevant Article of the Constitution. He also stated that as of now, the socially and educationally backward classes, in any of the State List, are not the socially and educationally backward for the purpose of the Central Government employment or admission to the Central Government educational institution. Many of the SCs/BCs in a State are not included in the Central List. He was of the view that if the amendment is passed in the present form, many of the socially and educationally backward people in many States would cease to be socially and educationally backward.

4. Outlining his proposed amendments to the Bill, he stated that the proposed Clause 3, the proposed Article 338B(5)(c) have to be modified with the inclusion to participate and advise on the planning, process of socio-economic development, enabling the NCBC in the line of similar provision for National Commission for Scheduled Castes and Scheduled Tribes. The proposed Article 338B(9) has to be removed enabling the State Government to continue to have the powers to identify the socially and educationally backward classes. The proposed Article 338(2) should be modified with the provision that the Chairperson should be a retired Judge of the Supreme Court or the High Court.

5. He further submitted that in the proposed Article 342A(1), instead of present words "after consultation with the Governors thereof", the words "on the receipt of a request from the Governor thereof" may be added. He submitted that if the words "on the receipt of a request of a request from the Governor thereof" are put in the amendment,

then automatically, they will be heard and participative democracy will be practised in this way. So, the President, with respect to any State or Union Territory, shall specify the socially and educationally backward classes for the purpose of making provisions for reservation of posts under the Government of India and under any other authorities under the Government of India, or, under the control of the Government of India. Secondly, under Article 342A(2), instead of saying that Parliament may by law, he suggested that the President may include or exclude from the Central List of socially and educationally backward classes specified in a notification issued under the clause.

6. He also suggested that new Article 342A(3) may be added empowering the Governor of the State to specify, by a public notification, the SCs/BCs for the purpose of making provisions for reservation of posts under that State or under any authority of the State or under the control of the State or seats in the educational institutions in the State because it varies from State to State. Also, Article 342A(4) may be added empowering the Governor of a State to include or exclude the State List of SCs/BCs specified in the notification issued under clause 3 on the advice of the respective States and Commission of the Backward Classes. He stated that only such amendments would be in consonance with the concept of federalism. He further stated that if the Bill becomes the law of the land in the present form, States will be deprived of their power to declare any class as socially and educationally backward class in the States. The proposed amendment goes against the direction given by the Supreme Court in the Mandal Commission. Article 342A, as proposed, would be violating the concept of federalism. There is also a clear and present danger of many SCs/BCs, socially and educationally backward classes, in many States losing their status as socially and educationally backward classes.

7. The Committee then heard Justice (Retd.) V. Eswaraiah. He submitted before the Committee that pursuant to the *Indira Sawhney vs Union of India* case, the National Commission for Backward Classes Act was enacted in 1993. It is a toothless Commission, whose only power was to recommend for inclusion or exclusion in the OBC list. Every ten years, revision has to be made. But, unfortunately, no revision took place because there was no socio-economic caste census. The Mandal Commission recommended the socio-economic caste census, but the Government of India declared that it was not their policy to collect socio-economic caste census. Socio-economic caste census was collected in 2011 but even in that, there was no column for indicating whether it was a socially and educationally backward class or not. But in the caste census, all the particulars were collected in 2011. That depicted about permanent or semi-permanent, qualifications, whether he is a tenth class fail or he has done elementary education, whether he is a daily wage worker or weekly wage worker or Government employee. Twenty-one columns are there. Therefore, now the socio-economic caste census is available after 2011. Unless the socio-economic caste census is meticulously published and categorized, it is not possible even for any Constitutional Commission to identify or to recommend as to which are the socially and educationally backward classes. No doubt, caste-based identification is one thing but over a period of time, new socially and educationally backward classes can emerge. That is what the Supreme Court has stated. If a father, son and grandson, irrespective of the caste or community, continue as rickshaw puller or carpenter or washermen or fishermen, whoever takes that occupation, he can be identified. The Supreme Court has stated in *Indira Sawhney vs Union of India* that caste-based identification is one thing but occupation-cum-income based identification of the backward classes also has to be identified.

8. He expressed his opinion that there cannot be two lists of OBCs; one by the State and other by the Central Government and that there should be only one list. It will not affect the federal structure of the Constitution. He stated that there should be a uniform policy with the Scheduled Castes and the Scheduled Tribes. He submitted that

the Chairperson should be a High Court or Supreme Court judge. He further submitted that he has fully supported the proposed legislation and that no modification is needed in the Bill.

9. The Committee then heard Shri S.K. Kharventhan, Ex- Member, Lok Sabha. He welcomed the proposal of giving constitutional status to NCBC to redress the grievances of the Backward classes. He also welcomed the creation of the post of Vice-Chairman. He stated that this Commission is at par with the SC and ST Commissions, however, pointed out an anomaly in Clause 338B 5(c). In the SC and ST Commission, there is a provision for participation in the planning process. But, in the new proposal, that is not available for NCBC. He submitted that this anomaly has to be removed. Since 1993, after creation of NCBC, even allocation of funds for the OBCs have been very low compared with the SCs/STs. That anomaly also has to be removed.

10. Another important question is regarding the appointment of Chairman. He stated that as per the majority judgement in the Indira Sawhney case, it is not mentioned anywhere that a judge is to be appointed as Chairman for the Commission. According to para 847 of the Indra Sawhney judgement, it was stated that there is a desirability of a permanent Statutory Body to examine complaints over inclusion and under inclusion. For inclusion and exclusion purpose only, it was created for the States and Centre. At that point of time, they appointed a judge as the Chairman of the National Commission for Backward Classes, but, most of the States have not appointed judges. Now, the new proposed Commission is having vast powers to redress the grievances of the OBC people. Such a person is to be appointed as the Chairman who is an expert, a person having the knowledge of the subject matter, and having grassroot level contacts.

11. He stated that according to his six years' experience in the National Commission for Backward Classes, the Chairman and Members are from the Backward Classes. He requested that Member Secretary must also be from the OBC. Then only there will be cooperation and proper administration for the welfare of the OBCs. He also opined that the proposed Act must be included in the Ninth Schedule to avoid controversy in courts.

12. Thereafter, the Committee heard Shri G. Karunanidhy, General Secretary, All India Federation of OBC Employees' Welfare Association. While supporting the Bill, he suggested modifications, particularly in Clause 3, Article 338B (2). He was of the view that the Chairperson should be from the judiciary in line with earlier Commissions. A retired Judge from a High Court or the Supreme Court will be helpful and there will be a check and balance between the Members and the Chairperson. He stated that the functions of the Commission have not been mentioned in the Bill and suggested that the Commission should examine the requests for inclusion of any class of citizens, over-inclusion or under-inclusion and the advice of the Commission shall ordinarily be binding upon the Central Government. This has already been recommended by the Parliamentary Committee for OBC in its First Report submitted to the Parliament on 27th August, 2012. The said Report stated that the Constitution Amendment Bill should also include the existing power of NCBC under the prevailing NCBC Act *vis-a-vis* power to include in or exclude from the list of OBCs and the obligation of the Government of India to consult NCBC for list revision. This aspect has not been mentioned in the Bill. He requested that this suggestion can be included.

13. In regard to Article 338B(5)(c) he suggested that the clause may be modified and 'Participation and advice' on the planning process be added. He stated that the 27th Report of the Standing Committee on Social Justice and Empowerment has already recommended it. The Committee on Welfare of OBC in its Report has already suggested that there should be a separate sub-plan for the OBCs. So, in line with this

recommendation of the sub-committee, this Bill has to be suitably modified so that the NCBC shall have the power to have participation in the planning process.

14. He suggested that in Clause 3, proposed Article 338B (9) has to be removed so that the State Governments shall continue to have the powers. Finally, in Clause 4, he suggested that modification should be made to 342A (1) and 342 (2) and also to additions have to be made on 343A (3) and 343A (4) so that the States shall have powers to identify the Backward Classes.

15. On the view that power of NCBC has not been prescribed in the Bill, Chairman stated that the power of NCBC is prescribed in the proposed Article 338B (5). As far as inclusion and exclusion is concerned, in Article 342, that power is with Parliament. he stated that the Committee will go through the suggestions made by the experts/witnesses. He also mentioned that the next meeting will be on 5th June wherein the Committee will hear some Ministries and experts on the subject.

16. A verbatim record of the proceedings of the Committee was kept.

The meeting adjourned at 1.05 p.m.

NEW DELHI;
15.05.2017

MAHESH TIWARI
DIRECTOR

MINUTES OF THE MEETING OF THE SELECT COMMITTEE OF THE RAJYA
SABHA ON THE CONSTITUTION (ONE HUNDRED AND
TWENTY-THIRD AMENDMENT) BILL, 2017

V

FIFTH MEETING

The Committee met at 11.00 A.M. on Monday the 05th June, 2017 in Room No 74,
Parliament Library Building Parliament House Complex, New Delhi.

PRESENT

1. Shri Bhupender Yadav— *Chairman*

MEMBERS

2. Shri B.K. Hariprasad
3. Shri Madhusudan Mistry
4. Shri Digvijaya Singh
5. Shri Husain Dalwai
6. Prof. Ram Gopal Yadav
7. Shri Sharad Yadav
8. Shri Sukhendu Sekhar Roy
9. Shri A. Navaneethakrishnan
10. Shri T.K. Rangarajan
11. Shri Dilip Kumar Tirkey
12. Shri Praful Patel
13. Smt. Kanimozhi
14. Shri Anil Desai
15. Shri Naresh Gujral
16. Shri Biswajit Daimary
17. Shri Swapan Dasgupta

SECRETARIAT

1. Shri M.K. Khan, *Joint Secretary*
2. Shri Mahesh Tiwari, *Director*
3. Shri R.S. Rawat, *Additional Director*
4. Shri Rakesh Anand, *Additional Director*
5. Smt. Monica Baa, *Additional Director*
6. Ms. Chhaya Gupta, *Under Secretary*

**Representatives of the Ministry of Social Justice and Empowerment
(Department of Social Justice)**

1. Smt. G. Latha Krishna Rao, Secretary
2. Shri B.L. Meena, Joint Secretary

3. Shri K. Narayanan, MD. National Backward Classes Finance and Development Corporation.

Representatives of the Ministry of Law and Justice (Department of Legal Affairs)

1. Shri Suresh Chandra, Secretary
2. Shri Ramayan Yadav, Additional Secretary

Representatives of the Ministry of Law and Justice (Legislative Department)

1. Dr. G. Narayan Raju, Secretary
2. Dr. Reeta Vasishta, Additional Secretary
3. Shri R. Sreenivas, Additional Legislative Counsel

**Representatives of the Ministry of Personnel, Public Grievances and Pensions
(Department of Personnel & Training)**

1. Shri Bhanu Pratap Sharma, Secretary
2. MS. Archana Varma, Joint Secretary

**Representatives of the Ministry of Human Resource Development
(Department of Higher Education)**

1. Shri K.K. Sharma, Secretary
2. Ms Ishiya Roy, Joint Secretary
3. Prof. V.K. Malhotra, Member Secretary, ICSSR
4. Dr. Jaspal Sandhu, Secretary, UGC

Representatives of the Ministry of Finance (Department of Expenditure)

1. Shri Ashok Lavasa, Secretary
2. Ms. Annie George Mathew, Joint Secretary.
3. Shri Sandeep Dave, Joint Secretary

Representatives of the Ministry of Finance (Department of Financial Services)

1. Smt. Anjuly Chib Duggal, Secretary
2. Shri Anil Kumar Kachi, Additional Secretary
3. Shri Madnesh Kumar Mishra, Joint Secretary

Witnesses

1. Shri Kapil Harishchand Patil, MLC, Maharashtra Legislative Council
2. Shri Ryaga Krishnaiah, MLA, Telangana Legislative Assembly
3. Shri Haribhau Rathod, Ex. M.P. and MLC, Maharashtra Legislative Council
4. Shri P.S. Krishnan, Former, Secretary, Ministry of Welfare
5. Shri Sahu Akshay Bhai, Chief Co-ordinator, National Council for Most Backward Classes
6. Shri Guduri Venkateswara Rao, President, All India BC Praja Welfare Association
7. Prof. P.C. Patanjali, Chairman, Pichada Varg Vikas Manch
8. Shri Hasib A. Aziz Nadaf

9. Prof. Prakash Sonawane
10. Shri Hansraj, President, Most Backward Classes Mahasangh
11. Shri Vishvanath Patil, President, Kunbi Sena Ram Wadi
12. Shri Shabbir Ahmed Ansari, All India Muslim OBC Organisation
13. Dr. Kailash Goud, Ex-Member, Maharashtra State Backward Class Commission
14. Shri Haji Shoukat Bhai Tamboli

2. At the outset, the Chairman welcomed the Members of the Committee and briefed them about the agenda for the meeting. He informed the Members that consequent to the publication of the Press Release inviting memoranda/suggestions from the public 72 memoranda had been received. He also briefed them about the response of the State Governments on the provisions of the Constitution (One Hundred and Twenty-third Amendment) Bill, 2017. Thereafter, he invited the Secretaries of the Ministry of Finance, Department of Expenditure and Department of Financial Services, Secretary, Ministry of Human Resource Development, Department of Higher Education, Secretary, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training to brief their views to the Committee.

3. Finance Secretary, Ministry of Finance, Department of Expenditure informed the Committee that when the Bill had come to their Department they supported it. He informed that the Ministry of Social Justice and Empowerment prepares the schemes for the backward classes and the Department of Expenditure appraises these schemes on the basis of rules/regulations. At present 9 schemes are operational for the backward classes which are operated by the National Backward Classes Finance and Development Corporation having a total budget of Rs. 6,833/- crore in the Budget year 2017-18. He assured the Committee that in future also they would strive to examine the schemes sent by the Ministry of Social Justice and Empowerment as per their appraisal mechanism before furnishing their recommendations.

4. Secretary, Ministry of Finance, Department of Financial Services stated that they agreed to the provisions of the Bill. She further stated that they circulated detailed instructions in 1993 to provide 27% reservation to the backward classes in banks and other financial institutions. Then in 1997 instruction were issued to appoint a separate Liaison Officer for OBCs whereas earlier a single Liaison Officer was looking after the SC/ST and OBCs. Recently in 2014 instructions have been issued to ensure presence of SC, ST, OBC, Minorities and Women on the Selection Board and Committee on a compulsory basis.

5. The Committee then sought clarifications on the following issues i.e. (i) number of General Managers from the OBCs in the entire banking sector; (ii) composition of the selection committee/board which conducts the interviews of the candidates in the banking sector; (iii) percentage of OBCs in Group A, B, C and D in the Nationalized banks; (iv) whether the banks are meeting the lending criteria of the priority sector and what are the shortfalls and its reasons; (v) data on the loans given to SCs, STs, Minorities and OBCs from the MUDRA scheme; (vi) whether the loans given by the National Backward Classes Finance and Development Corporation are given directly to the applicants or whether the State governments are involved and State-wise details of the amount released; and (vii) steps needed to be taken to expedite the process by which funds for the welfare of the OBCs reach the State governments in time.

6. Secretary, Ministry of Human Resource Development, Department of Higher Education informed the Committee about the position regarding admission of students and also the recruitment of faculty in the Central Universities and Centrally funded Technical Institutions with regard to OBC candidates. He also briefed the Committee about the effects

of the Central Educational Institutions (Reservation in Admission) Act, 2006. He informed that regarding recruitment of faculty in Central Universities a meeting is held in the conference hall of the Hon'ble President of India to discuss it and emphasis is given to ensure that weaker sections are given due importance in the recruitments. Like-wise special efforts are being made to recruit faculty from the weaker sections in the Indian Institutions of Management by going in for special recruitment drives. Secretary, UGC also briefed the Committee about the status of admission of OBC students in Central Universities and about the recruit of OBC faculty in Central Universities with special regard to JNU and Delhi University.

7. Secretary, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training informed the Committee that when the Bill had come to them for comments they had given their concurrence to it. As regards providing representation in jobs as per the reservation he informed that they were monitoring ten big departments and ensuring that reserved category seats were filled up at the earliest. This move was to ensure that representation in jobs would come close to the desired level. In fact they had even issued an O.M. on 22nd October, 2014 wherein each department was asked for in-house study to assess the exact position regarding reserved post vacancies and the reasons for it not getting filled up. He informed further that after the Indra Sawhney judgment the Department of Social Justice and Empowerment constituted a committee to decide upon the issue of creamy layer. On the basis of the recommendations of this Committee, DoPT issued an O.M. dated 8th September, 1993 which detailed the manner in which creamy layer was to be determined. This has helped settle the issue to a large extent. The only difficulty is with regard to candidates whose parents work in the PSUs. This is because the said O.M. states that their equivalence would be determined with respect to Group 'A' Central Government officers. This equivalence has not been determined till date due to which income sealing is taken as criteria for determining the creamy layer status.

8. The Committee thereafter sought clarifications on the following issues *i.e.* (i) how many SC, ST and OBCs were members of UPSC; (ii) whether creation of supernumerary posts would help reduce the number of backlog vacancies; (iii) what are the parameters to assess merit of a candidate; (iv) status of the case wherein creamy layer status of qualified candidates was to be determined by the High Court; and (v) whether 400 candidates had not been sent for training despite having qualified the Civil Services examination, since OBC reservation had been implemented. The Chairman further directed the Secretary, DoPT to send the proposals suggested by the Backward Classes Commission since 1993 and what steps had been taken by the government on them. He also sought information on the recommendations of the Parliament's Committee on Backward Classes and action taken on them for consideration of the Committee.

9. Thereafter, the Chairman welcomed the experts/individuals/organizations for oral evidence. He informed them about the important provisions of the Bill and then sought their views on the same. Shri Guduri Venkateswara Rao, President, All India BC Praja Welfare Association was of the view that in the reconstituted National Commission for Backward Classes there should be one Chairman, two Vice- Chairman and six members so that the OBC population of the country is adequately represented in it. Further for any caste to be included in the OBC list it should first be recommended by NCBC before it goes to the Parliament. Dr. Kailash Goud, Ex-Member, Maharashtra State Backward Class Commission was of the view that constitutional status should be provided to the State Backward Class Commissions and before inclusion or deletion of any community from the OBC list, a report of the respective State Backward Class Commission must mandatorily be appended to it.

10. Prof. P.C. Patanjali, Chairman, Pichada Varg Vikas Manch was of the view that the Chairman of the NCB should either be a sociologist or a retired or serving Judge so that justice could be done in adding or deleting communities for the OBC list. Shri Haribhau Rathod, Ex-MP stressed on the need to use a single term 'Other Backward Class' at all places in the Bill, and was of the view that OBC should be categorized into

different groups for proper distribution of benefits. Prof. Prakash Sonawale was of the view that the Chairman of the NCBC should be a retired Judge and the Vice-Chairman should be from a minority community so that they get due representation. He further requested that efforts should be made to ensure that denotified and nomadic tribes should get justice.

11. Shri Haji Shoukat Bhai Tamboli was of the view that there should be a coordination between the National and State Backward Classes Commission for more effective functioning. He highlighted the difficulties being faced by the candidates in getting OBC certificates in the States and sought a remedy for it. Shri Hasib A. Aziz Nadaf was of the view that a census was needed to assess the percentage of backward classes in the country and a proper categorization of the OBCs should also be done. Shri Shabbir Ahmad Ansari, All India Muslim OBC Organisation was of the opinion that the term "socially" should be included in the name of the National Backward Classes Commission and that there should be clarity on the composition of the committee that would appoint the Chairman and members of the NCBC. Shri Hansraj, President, Most Backward Classes Mahasangh also sought proper classification of the OBC. He sought a constitutional status for the State Backward Class Commissions also and that the recommendation of the State Commissions should be final on the issue of inclusion/exclusion in/from the OBC list. Shri Kapil Harischand Patil, MLC sought a constitutional status for the State Backward Classes Commission on the lines of NCBC. Shri Sahu Akshya Bhai, Chief Co-ordinator, National Council for Most Backward Classes was of the view that clarity should be there on the selection committee which would select the Chairman and members of the NCBC and the strength of the Commission should be at least 7.

12. Shri P.S. Krishnan, Former Secretary, Ministry of Welfare was of the view that for the process under Article 342A(I), where a list is going to be issued by the President after consultation with the State Governments, before finalizing the list, the advice of the National Commission for Socially and Educationally Backward Classes should be taken. Shri Krishnan further stated that the Commission should have role in the second stage, that is under Article 342A(2). Subsequently, when any additional or deletion has taken place, even at this stage the Commission should be consulted. He was also of the view that the present composition of the NCBC should be reflected in the new Commission which would be set up after the passage of the Bill like for example presence of a judge, a social scientist, and representatives of extreme backward classes in it. Thereafter he suggested the following *i.e.* (i) the existing Central List of socially and educationally backward classes should be deemed to be the Presidential Order of Backward Classes for Article 342 A(I); (ii) in Article 338(5)(C) the word 'participate' needs to be inserted so that the Commission not only participates in but also advises on the planning process; (iii) the name of the Commission should include 'socially and educationally backwards'; and (iv) a cadre needs to be built up for making the NCBC more effective.

13. Concluding the meeting the Chairman thanked the delegates for sharing their views with the Committee and made a special reference to Shri P.S. Krishnan acknowledging his work in the field of affirmative action. Thereafter, the Chairman requested the members to submit their proposed amendments to the Bill, if any, before the Committee takes up the clause-by-clause consideration.

14. A verbatim record of the proceedings of meeting was kept.

15. The Committee adjourned at 1.52 p.m.

MINUTES OF THE MEETING OF THE SELECT COMMITTEE OF THE
RAJYA SABHA ON THE CONSTITUTION (ONE HUNDRED AND
TWENTY-THIRD AMENDMENT) BILL, 2017

VI

SIXTH MEETING

The Committee met at 11.00 A.M. on Monday the 03rd July, 2017 in Committee Room B, Parliament House Annexe, New Delhi.

PRESENT

1. Shri Bhupender Yadav — *Chairman*

MEMBERS

2. Dr. Vikas Mahatme
3. Shri Ram Narain Dudi
4. Shri B.K. Hariprasad
5. Shri Madhusudan Mistry
6. Shri Hussain Dalwai
7. Prof. Ram Gopal Yadav
8. Shri Sharad Yadav
9. Shri Sukhendu Sekhar Roy
10. Shri A. Navaneethakrishnan
11. Shri T.K. Rangarajan
12. Shri Dilip Kumar Tirkey
13. Shrimati Kanimozhi
14. Shri Anil Desai
15. Shri Naresh Gujral
16. Shri Biswajit Daimary
17. Shri Rajeev Chadrsekhar
18. Shri Swapan Dasgupta

SECRETARIAT

1. Shri J.G. Negi, *Joint Secretary*
2. Shri Mahesh Tiwari, *Director*
3. Shri Rakesh Anand, *Additional Director*
4. Shrimati Monica Baa, *Additional Director*

**Representatives of the Ministry of Social Justice and Empowerment
(Department of Social Justice)**

1. Shri B.L. Meena, Joint Secretary
2. Shri K. Narayanan, MD, National Backward Classes Finance and Development corporation

Representatives of the Ministry of Law and Justice (Department of Legal Affairs)

1. Shri Suresh Chandra, Secretary
2. Shri Ramayan Yadav, Additional Secretary

Representatives of the Ministry of Law and Justice (Legislative Department)

1. Dr. G. Narayan Raju, Secretary
2. Dr. Reeta Vasishta, Additional Secretary
3. Shri R. Sreenivas, Additional legislative Counsel

2. At the outset, the Chairman welcomed the Members of the Committee and briefed them about the agenda of the meeting. He informed the Members that consequent to the publication of the Press Release inviting memoranda/suggestions from the public 72 memoranda had been received. He also briefed them about the response of the State Governments on the provisions of the Constitution (One Hundred and Twenty-third Amendment) Bill, 2017. Thereafter he informed the Members that the Committee would take up clause-by-clause consideration of the Constitution (One Hundred and Twenty-third Amendment) Bill, 2017 in the meeting and the Secretaries of the Ministries of Social Justice and Empowerment, Ministry of Law & Justice, Legislative Department and Department of Legal Affairs would provide the necessary clarifications.

3. Some of the Members raised apprehensions for bringing the Bill for consideration under Article 338 and sought clarification as to not bringing it under Article 340. It was apprehended that after this enactment Article 340 may become redundant. In response Secretary, Legislative Department, Ministry of Law & Justice informed that Article 340 is for creating *ad hoc* Committees by the President. Further, based on the Mandal Commission recommendations, the Supreme Court directed the Government to constitute a permanent body and in pursuance of this the National Commission for Backward Classes was created *vide* the NCBC Act of 1993. The present Bill is simply an effort to give constitutional status to this Commission. Article 340 would in no way become redundant and the government would still have the powers to set-up *ad hoc* Committees under it. Thereafter the Committee took up the clause-by-clause consideration.

4. **The Clause 2** of the Bill was adopted without any amendments.

5. The Committee then took up **Clause 3** for consideration. The Committee took up the amendment to rename the proposed Commission as provided under sub-clause (1) of Article 338B as National Commission for Socially and Educationally Backward Classes. In response the Ministry clarified that the nomenclature of the proposed Commission had been decided after inter-ministerial consultation, where it was felt that calling it National Commission for Socially and Educationally Backward Classes was self-explanatory.

6. Some Members suggested that qualifications of the Chairman and members of the Commission should be provided in the amendment. Some members also suggested that the Chairperson could be a retired Judge of the Supreme Court/High Court and the Vice-Chairperson be from the OBC/minority community. Further, one women member also be there and the Member-Secretary could be an officer of Secretary level to the Government of India. Other suggestions were to include social scientist and expert with special knowledge in matters relating to backward classes and atleast one member should be from a community categorized as Most Backward Class or Extremely backward Class.

7. The Committee then took up **sub-clause (5) of the proposed article 338B** for consideration. The Members wanted that sub-clause (c) of article 338B(5) be amended and read as follows '*to participate and advise on the planning process of the socio-economic development of the socially and educationally backward classes and to evaluate the progress of their development under the Union and any State.*' In

response the Ministry stated that all the sub-clauses under clause (5) article 338B imply a participative role of the proposed Commission. The Committee noted the stand of the Ministry.

8. The Committee then took up the following amendments proposed by certain other Members:

On page 2, After line 11, two new sub-clauses (a) and (b) added and the existing sub-clauses (a) to (f) be renumbered as (c) to (h). The new sub-clause (a) and (b) be read as follows:

'(a) (i) To examine the draft list of socially and educationally backward classes to be submitted to President for public notification under Article 342A (1) and tender such advice to the Central Government as it deems appropriate.

(ii) The advice tendered by the Commission shall ordinarily be binding on the Central Government:

Provided that if the Central Government doesn't agree with the advice of the Commission, it shall record its reasons in writing and submit such reasons along with the draft list to the President.

(b) (i) To examine and advice the Central Government on the requests of inclusion or exclusion from the list of socially and educationally backward classes for the purpose of enabling the Parliament to amend this list under Article 343A(2) and to hear complaints of over-inclusion and under-inclusion of any backward classes in such list and tender such advice to the Central Government as it deems appropriate.

(ii) The advice tendered by the Commission shall ordinarily be binding on the Central Government:

Provided that if the Central Government doesn't agree with the advice of the Commission, it shall record its reasons in writing and place the same before both Houses of Parliament'.

9. The Committee also took up the proposed amendment regarding inclusion of a new sub-clause (g) under clause (5) in article 338B stating '*to examine request for inclusion of any class of citizens as a backward class in the lists and hear complaints of over-inclusion or under-inclusion of any backward class in such lists and tender such advice to the Central Government as it deems appropriate*'. It was clarified to the Committee that hearing of complaints by the proposed Commission is provided under article 338B(5) and regarding examination of requests for inclusion of any class as a backward class, the same would be available to the Commission as part of the modalities to be issued on enactment of the Bill.

10. The Committee then took up for consideration the amendment of Clause 5(d) of the proposed article 338B wherein the words '*and at such other times as the Commission may deem fit*' be deleted. The Committee discussed about the inordinate delay in laying the annual reports of different commissions/committees before the Parliament, hence they are not discussed in the House. In response the Ministry of Social Justice and Empowerment clarified that the Annual Reports of the commissions are submitted to the President. The Ministry obtains Action Taken Reports from the States and various Ministries and lay on the Table of the Parliament. Apart from this, the Commission also submits two-three special reports like in case of some incidence in some State. These are separate reports from the Annual Report. The Committee noted the explanations furnished by the Ministry and hoped that the proposed Commission would lay its Annual Reports and other reports well in time before the Parliament for its consideration.

11. The Committee took up for consideration the following amendments proposed by certain Members in sub-clause (8) of article 338B:

On page 2, for lines 41 and 42, the following shall be substituted, namely:

'(8) The Commission shall, while examining requests and complaints as referred to in sub-clauses (a) and (b) or investigating any matter referred to in sub-clause (c) or inquiring into any complaint referred to in sub-clause (d) of clause (5)'

12. In response it was clarified that the Commission shall have, while investigating any matter referred to sub-clause (a) or inquiring into any complaint referred to in sub-clause (b) of Clause (5) have all the powers of Civil Court trying a suit.

13. The Committee discussed the amendment wherein in article 338B a new sub-clause (10) was proposed to be inserted. This sub-clause (10) would state that *'Notwithstanding anything provided in clause 9, the State Government shall continue to have powers to identify socially and Educationally Backward Classes'*.

14. It was clarified by the Ministry to the Committee that the proposed amendment does not interfere with the powers of the State Governments to indentify the Socially and Educationally Backward Classes. The existing powers of the State Backward Classes Commission would continue to be there even after the passage of the Constitution (One Hundred and Twenty-third Amendment) Bill, 2017.

15. The Committee held discussions on the amendments proposed and in view of the explanation given by the Ministry, the Committee adopted clause 3 without any amendments.

16. The Committee then took up Clause 4 of the Bill for consideration. The Committee considered the following amendment proposed by certain Members:

(i) Sub-clause (1) of article 342A be modified as follows:

"The President with respect to any State or Union Territory, and where it is a State, on the request made by the governor thereof, by public notification specify the socially and educationally backward classes for the purposes of making provisions for reservation of appointment to an office or posts under Government of India or under any authority of Government of India or under the control of the Government of India or seats in Central Government educational institutions";

(ii) Sub-clause (2) of article 342A be modified as follows:

"The President may, on the advise of the National Commission for Backward Classes include or exclude from the Central list of socially and educationally backward classes specified in a notification issued under clause (1).";

(iii) In article 342A insert clause (3) as follows:

"The Governor of a State, by public notification specify the socially and educational backward classes for the purposes of making provisions for reservation of posts under that State or under the control of the State, or seats in the educational institutions within that State"; and

(iv) In article 342A insert clause (4) as follows:

"The Government may, on the advice of the State Commission of Backward Classes include or exclude from the State list of socially and educationally backward classes specified in a notification issued under clause (3)".

17. Another set of amendments proposed by some Members on Clause 4 were as follows:

- (i) Sub-clause (1) of article 342A be modified as follows "The President may with respect to any State or Union territory, and where it is a State, *only with prior recommendation of the State Government and giving due regard to such recommendation*, by public notification, specify the socially and educationally backward classes which shall be deemed to be the central list of socially and educationally backward classes in relation to that State or Union territory, as the case may be.

- (ii) After sub-clause (2) of article 342A the following be inserted:

(3) *"Every state Government may, by public notification, specify the socially and educationally backward classes in that State which shall be deemed to be the State List of socially and educationally backward classes in relation to that State.*

(4) *The State may by law include in or exclude from the State List of socially and educationally backward classes specified in a notification issued under clause (3) any socially and educationally backward class, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification".*

18. Another set of amendments proposed by some Members on Clause 4 were as follows:

Article 342A(1):—On page 3, after line 19, the following shall be inserted, namely:

"Provided that such public notification shall be issued on the basis of advice tendered by the Commission under Article 338B(5)(a) and shall be placed in both Houses of parliament as soon as possible after issuance:

Provided further that the consultation with the Governor of a State shall be on the basis of advice tendered to the Governor by the State Commission of Backward Classes of that State.

Article 342A (2):—On page 3, after line 23, the following lines shall be inserted, namely:

"Provided that such a law is based on the advice tendered by the Commission under Article 338B (5)(b)."

Article 342A (3):—On page 3, after Article 342A (2), a new clause be added, namely:

'342A (3):—The Central Government may at any time, and shall, at the expiration of ten years from the coming into force of the list notified under Article 342A (1), and every succeeding period of ten years thereafter, on advice of the Commission, undertake revision of the list with a view to exclude those classes who have ceased to be backward classes or for including in such list new backward classes'.

19. The Ministry, on the issues raised, clarified that time bound decadal revision of lists by the proposed Commission, is a continuous process. The Commission however, is empowered to enquire into specific complaints with respect to the deprivation of right and safeguards of the socially and educationally backward classes. The Ministry clarified further that the aspect of reservation of posts under that State or under any other authority of the State or under the control of the State, or seats in the educational institutions within that State was beyond the purview of the instant Bill and hence the amendments proposed are not allowed.

20. It was further clarified by the Ministry that clause (1) of article 154 and article 163 of the Constitution clearly state that Governor shall act on the advice of the Council of Ministers. Under above Constitutional provisions the Governor shall exercise his authority either directly or indirectly through officers of respective State Government. Article 341 of Constitution provides for consultation with Governor of State with respect to Scheduled Castes and article 342 of the Constitution provides consultation of president with Governor of State in respect of Scheduled Tribes. As is the practice at no time has the State Government been excluded in the consultation process. It is always invariably the State Government which recommends to the President the category of inclusion/exclusion in Scheduled Castes and Scheduled Tribes. Similar provision is provided for in the case of conferring of constitutional status for backward classes for inclusion in Central list of SEBC. Consultation with Governor thereby implies consultation with State Government.

21. It was further informed that the phrase "for the purpose of this Constitution" as provided in sub-clause (1) of article 342A is a legislative requirement as advised by the Legislative Department, Ministry of Law and Justice. The setting up of the proposed Commission will not be retrograde to the interest of the socially and educationally backward classes. The article 342A will provide for a comprehensive examination of each case of inclusion/exclusion from the Central List. The ultimate power for such inclusion/exclusion would stand vested with the Parliament.

22. The Committee held discussions on the proposed amendments and in view of the explanations furnished by the Ministry the Clause 4 of the Bill was adopted without any amendments.

23. The Clause 5 of the Bill was adopted without any amendment.

24. Clause 1: Enacting formula and the Title of the Bill were adopted by the Committee without any amendments.

25. Concluding the meeting the Chairman thanked the Members and Officials present for sharing their views with the Committee and informed the next meeting of the Committee would be held on 14th July, 2017 to consider and adopt the draft Report of the Select Committee.

26. A verbatim record of the proceedings of meeting was kept.

27. The Committee adjourned at 12.43 p.m.

NEW DELHI;
3rd July, 2017

MAHESH TIWARI
Director

MINUTES OF THE MEETING OF THE SELECT COMMITTEE OF THE
RAJYA SABHA ON THE CONSTITUTION (ONE HUNDRED AND
TWENTY-THIRD AMENDMENT) BILL, 2017

VII

SEVENTH MEETING

The Committee met at 11.00 A.M. on Friday the 14th July, 2017 in Committee Room A, Parliament House Annexe, New Delhi.

PRESENT

1. Shri Bhupender Yadav — *Chairman*

MEMBERS

2. Dr. Vikas Mahatme
3. Shri Ram Narain Dudi
4. Shri B. K. Hariprasad
5. Shri Digvijaya Singh
6. Shri Husain Dalwai
7. Prof. Ram Gopal Yadav
8. Shri Sharad Yadav
9. Shri A. Navaneethakrishnan
10. Shri T. K. Rangarajan
11. Shri Praful Patel
12. Smt. Kanimozhi
13. Shri Anil Desai
14. Shri Naresh Gujral
15. Shri Swapan Dasgupta
16. Shri Ram Kumar Kashyap

SECRETARIAT

1. Shri J. G. Negi, *Joint Secretary*
2. Shri Mahesh Tiwari, *Director*
3. Shri R. S. Rawat, *Additional Director*
4. Shri Rakesh Anand, *Additional Director*

**Representatives of the Ministry of Social Justice and Empowerment
(Department of Social Justice)**

1. Smt. G. Latha Krishna Rao, Secretary
2. Shri B. L. Meena, Joint Secretary
3. Shri K. Narayanan, MD, National Backward Classes Finance and Development Corporation

**Representatives of the Ministry of Law and Justice
(Department of Legal Affairs)**

1. Shri Suresh Chandra, Secretary
2. Shri Ramayan Yadav, Additional Secretary

Representatives of the Ministry of Law and Justice (Legislative Department)

1. Dr. G. Narayan Raju, Secretary
2. Dr. Reeta Vasishta, Additional Secretary
3. Shri R. Sreenivas, Additional Legislative Counsel

2. At the outset, the Chairman welcomed the Members of the Committee, Secretary, Ministry of Social Justice and Empowerment, Secretary, Department of Legal Affairs and Secretary, Legislative Department, Ministry of Law & Justice and their team to the meetings of the Select Committee of the Rajya Sabha. The Chairman informed the Members that the meetings has been convened to consider and adopt the draft Report on the Constitution (One Hundred and Twenty-third Amendment) Bill, 2017. This is the Seventh Meeting of the Select Committee. The Chairman further informed that the draft report which would be taken up for discussion if during the process of deliberation any point which would be raised by the Members that would be clarified by the representatives of the Ministries present in the meeting.

3. During the discussion some the Members raised apprehensions with regard to giving constitutional status to the Commission that should it be under Article 338 B or under article 340. It was apprehended that after this enactment article 340 may become redundant. Apprehensions were raised on the powers of the State Governments to include or exclude communities in the State list of Other Backward Classes after the enactment of the Constitution (One Hundred and Twenty-third Amendment) Bill, 2017. Some Members raised the concern that the recommendations of the Commission may not be taken seriously and so provisions should be made in the Bill for it. It was also suggested by some Members that like the Tribal Advisory Council a Council may be created for looking into the issues of the socially and educationally backward classes. Some of the Members also suggested that the number of members in the Commission be increased and representation be ensured for the women and socially and educationally backward classes in it.

4. Secretary, Ministry of Social Justice and Empowerment clarified that when an Act is passed it will only lay down the broad policy statement. The modalities for implementation of an Act or a Constitutional Amendment comes through the process of rules. So the issues like the membership, status of the Chairperson would be covered in the rules. She further informed that under article 338 a permanent Commission can be set-up while under article 340 a permanent status cannot be conferred on the proposed Commission. The National Commission for Scheduled Tribes was created under article 338A so it naturally follows that article 338B would need to be inserted to give permanency to National Commission for Backward Classes. She also clarified that conferring of constitutional status on the National Commission for Backward Classes would in no way take away the existing powers of the State Backward Classes Commissions. The only difference would be with regard to the Central List, where the power of exclusion or inclusion, after the Constitutional amendment, it would come to the Parliament with the recommendations of the NCBC.

5. Thereafter, the draft report was adopted. The Chairman stated that those Members who desire to give Dissent Notes, the same may be handed over to the Secretariat latest by 6.00 P.M. on 15th July, 2017.

6. Concluding the Meeting the Chairman thanked the Members for the efforts made by them in making the meetings of the Committee informative and purposeful. The Chairman on behalf of the Committee appreciated the hard work and diligence put in by the officials of the Rajya Sabha Secretariat including the Reporters and Interpreters. He also thanked the officers of the Ministries of Social Justice and Empowerment, Legal

Affairs and Legislative Department who contributed in the deliberations of the Committee.

7. A verbatim record of the proceedings of meeting was kept.

8. The Committee adjourned at 12.45 p.m.

NEW DELHI;
14th July, 2017

MAHESH TIWARI
DIRECTOR